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No. 10-107

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IN THE

SUPREME COURT OF THE UNITED STATES

Patrizia Riccardi,

Petitioner,

V

Robert Kessler,

Respondent

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There are two questions presented:

1) Whether Petitioner was denied equal protection of the law and/or due process in the form of a fair trial as a result of the Sixth Circuit's sanction of the District Court's Fed.R.Evid. 412 ruling admitting evidence of Petitioner's sexual history at trial, despite the fact that this evidence did not have probative value and would invoke gender sexual stereotypes and unfairly prejudice Petitioner whose case against Respondent included allegations of sexual harassment, retaliation, physical assault and attempted rape?

2) Did the Sixth Circuit Court of Appeals err when it issued a ruling, conflicting with other Courts of Appeals, refusing to consider Petitioner's due process denial of fair trial argument concerning District Court Judge Thomas Wiseman's conflict of interest in violation of 28 USC §455(a), because Petitioner did not raise the issue at the trial court level?

This issue is presented under circumstances where the conflict of interest existed at the time Judge Wiseman heard the action, but was never disclosed by him, and was only discovered by Petitioner after judgment was entered against her and she had submitted her appellate brief. The Sixth Circuit's ruling conflicts with decisions of other Courts of Appeals, recognizing concerns of due process and the integrity of the judiciary, allowing a party to present a due process denial of fair trial argument under analogous circumstances despite the fact that the issue was never raised to the trial court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Patrizia Riccardi, Pro Se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Unites States Court of Appeals for the Sixth Circuit which reversed, in part, the District Court's dismissal of Petitioner's retaliation claims against Respondent is unpublished and attached as Appendix A. The Appellate Court's opinion denying Petitioner's request to supplement her appellate brief to include a constitutional due process/ denial of fair trial argument based on the newly discovered facts concerning District Court Judge Thomas Wiseman's undisclosed conflict of interest and close ties to Defendant Vanderbilt University is unpublished and attached as Appendix B.

The opinion of the District Court granting partial summary judgment to Defendants is attached as Appendix C. The opinion of the District Court granting Respondent's motion in limine to include evidence of Petitioner's sexual history at trial is attached as Appendix D.

JURISDICTION

The Court of Appeals for the 6th Circuit issued its decision on January 28, 2010. (Pet. App. A) Petitioner filed a timely petition for a writ of certiorari on April 28, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). Notice was sent pursuant to USCS Supreme Ct R 29.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides, in relevant part: No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . . U.S. Const. amend. XIV, § 1.

The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This Petition presents matters of general public importance in the administration of justice and the public's perception of the judiciary. Petitioner was denied due process and a fair trial because District Court Judge Thomas Wiseman should have disqualified himself from hearing the case pursuant to 28 USC §455(a) based on his and his family's close ties with Vanderbilt(Appendix E at pp. 69a-143a). Judge Wiseman did not disclose his conflict of interest at the time he heard the case and made numerous adverse rulings against Petitioner, including, but not limited to, granting partial summary judgment, ruling Petitioner's sexual history was admissible evidence, and dismissing, as a matter of law, Petitioner's retaliation claims (which were later remanded by the Sixth Circuit for a trial). (App.A at pp.17a-22a). Petitioner only discovered Judge Wiseman's conflict of interest after judgment was entered against her. The Sixth Circuit erred in refusing to allow Petitioner to supplement her brief to present the evidence of Judge Wiseman's conflict of interest so that the Court could vacate the Judgment as required on the basis that Petitioner was denied due process because of Judge Wiseman's conflict of interest.

Petitioner was also denied equal protection and/or due process and a fair trial as a result of Judge Wiseman Fed.R.Evid. 412 evidentiary ruling that evidence of her sexual history was admissible at trial. This evidence was substantially unfairly prejudicial to Petitioner who sought futily to prove at trial, among other things, that Respondent sexually harassed her, physically assaulted her and attempted to rape her, in the face of Respondent's portrayal of her as sexually promiscuous. The Sixth Circuit sanctioned the District Court's prejudicial evidentiary ruling and undisclosed conflict of interest. The District Court's conduct and prejudicial ruling so far departed

from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

Petitioner was the Petitioner in Civil case No 3:06-0605, filed on June 15, 2006, in the District Court of the Middle District of Tennessee against Vanderbilt University Medical Center ("Vanderbilt"), Dr. Martin Sandler
and her former supervisor, Dr. Robert Kessler ("Kessler" or "Respondent"), who is employed by Vanderbilt University. Petitioner's complaint is attached as Appendix E at pp.144a-163a. Petitioner's Complaint, filed pursuant to Title VII, Civil Rights Act of 1964 as amended, 42 U.S.C. 2000(e), and the Tennessee Human Rights Act ("THRA"), T.C.A. § 4-21-101 *et seq.*, alleged sexual harassment and/or a sexually hostile work environment, and retaliatory conduct as against the Vanderbilt, Respondent and Dr. Martin Sandler. Additionally, Petitioner alleged claims of personal injury/battery, and intentional infliction of emotional distress against Respondent for attempted rape/sexual assault occurring on June 20, 2005, and causing her imprisonment thereafter. Complaint (App. E at pp.144a-163a).

Respondent filed a Complaint against Petitioner docketed as Civil case No 3:06-0615, and the cases were consolidated. Respondent defended himself against Petitioners' claims by alleging that Petitioner falsely accused him of attempted rape and sexual harassment, and by alleging that Petitioner falsely denied having a consensual sexual relationship with him. Respondent's Complaint asserted the following claims against Petitioner: defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, assault and battery, and interference with business relationships. (Respondent's Complaint, Appendix E at pp.164a-170a).

On May 30, 2007, Respondent moved for Partial Summary Judgment seeking to dismiss Petitioner's THRA retaliation claims against Respondent based upon his refusal to adequately assist Petitioner with Petitioner's grant proposals and his refusal to include Petitioner on any of his grant submissions after Petitioner made a formal sexual harassment complaint

against him. In a decision and Order dated, August 8, 2007, the District Court granted the motion, in part (Appendix C at pp. 27a-64a).

The District Court dismissed all of Petitioner's retaliation claims against Respondent except for her retaliation claims based on Respondent's refusal to include Petitioner on his Methamphetamine and Risperidone grants, finding genuine issues of material fact existed as to whether Respondent did not include Petitioner on these grant proposals in retaliation for Petitioner's sexual harassment complaint against him (Appendix C at pp. 58a-61a).

The District Court's Unfairly Prejudicial Fed.R.Evid. 412 Ruling Admitting Petitioner's Sexual History At Trial

Trial in this matter began on October 9, 2007 and ended on October 18, 2007. Judgment was entered on October 25, 2007. Prior to the trial, Petitioner made a motion in limine to exclude evidence of her sexual history at trial (App. E at pp. 171a-180a); Respondent also made an untimely motion pursuant to Fed.R.Evid. 412 to "Admit Evidence of Dr. Riccardi's *Past Sexual Behavior and Sexual Predisposition*" at trial. (App. E at pp. 181a-190a)

Respondent developed his defense and affirmative case in this matter based upon his false allegations that Petitioner had a consensual affair with him. Respondent's reasons for eliciting testimony from Petitioner about her sexual history were allegedly twofold. First, the real reason, demonstrated by the title of Respondent's Fed.R.Evid. 412 Motion (and its content) was to paint Petitioner as promiscuous. (App. E at pp.181a-190a; "Dr. Robert Kessler's Motion to Admit Evidence of Dr. Riccardi's *Past Sexual Behavior and Sexual Predisposition*"). Second, Respondent claimed that Petitioner shared with him personal information, including information about her prior relationships, and consequently, this supposedly proved that he had a consensual sexual affair with Petitioner. (*Id.*)

The District Court denied Petitioner's motion in limine to exclude the evidence and granted Respondent's untimely Rule 412 motion to admit the evidence reasoning that the testimony was probative of whether there was a sexual relationship between the parties and issues of credibility (Appendix D at pp 65a-68a).

Given a free pass by the District Court to objectify Petitioner and exploit gender sexual stereotypes in order to prejudice the jury against her, Kessler's attorney did not limit his questions to whether Petitioner shared with Respondent personal information, including information about her prior relationships. Instead, he spent a substantial amount of time asking Petitioner about her sexual history and whether she actually slept with certain men. (Appendix E at pp. 191a-199a). Therefore, the kind of information Respondent's attorney elicited from Petitioner went well beyond being probative of the type of conversations Petitioner had with Respondent. When Petitioner's (then) lawyers met with two jury members after the trial, the foreman told them that the jury believed Petitioner had sex with Respondent because if Petitioner had sex with another man she testified about, then it proved she had sex with Respondent.

On October 16, 2007, Respondent made a Rule 50 motion for a directed verdict on Petitioner's THRA retaliation claim based on Respondent's refusal to include her on his Risperidone and Methamphetamine grants. On October 17, 2007, the District Court granted that motion reasoning that Petitioner could not demonstrate under Tennessee Law that she suffered a materially adverse employment action as a result of Respondent's actions with respect to those grants and that Petitioner failed to demonstrate that Respondent's reasons for excluding Petitioner from those grant submissions were pretextual. (App. E at pp. 226a-227a). This decision was later reversed by the Sixth Circuit Court of Appeals. (Appendix A)

On October 17, 2007, Petitioner made a Rule 50 motion

for a directed verdict on Respondent's defamation claim, which was denied by Judge Wiseman. (Appendix E at pp. 200a-207a). Also, On October 17, 2007, the Jury returned a verdict in favor of Respondent on his assault, battery and defamation claims. Petitioner timely filed a renewed Rule 50 motion seeking judgment as a matter of law on Respondent's defamation claim; however, that motion was also denied by District Court Judge Wiseman. (Appendix E at pp. 208a-224a). In the alternative, Petitioner requested a remittitur of the Jury's verdict, which was granted and reduced the jury's award of compensatory damages on the defamation claim to $250,000 and the punitive damages to $250,000. (*id*).

Respondent accepted the remittitur and the District Court entered final judgment on 1/28/08 (Appendix E at pp. 225a). Petitioner timely filed a Notice of Appeal to the Sixth Circuit Court of Appeals on 2/25/08.

Petitioner's Discovery of District Court Judge Wiseman's Conflict Of Interest; And The Sixth Circuit's Denial Of Petitioner's Request To Assert A Due Process/ Denial Of Fair Trial Argument Based On The Conflict

Petitioner timely filed her appellate brief on June 5, 2008. After Petitioner filed her appeal, she discovered, through her own investigation, that District Court Judge Wiseman had a conflict of interest in violation of 28 USC §455(a), in that he and his family have close financial and personal ties to Vanderbilt University. Petitioner discovered the following facts demonstrating District Court Judge Wiseman's conflict of interest, which existed during the time he presided over Petitioner's case:

1) Judge Wiseman was an adjunct faculty member at Vanderbilt University Law School, from 1989 until 2004. (Appendix E at pp. 69a-87a).

2) In 2004, Judge Wiseman was awarded by Vanderbilt the Law School Distinguished Service Award. In receiving the

Award, Judge Wiseman stated "I am grateful to Vanderbilt for this award and for the opportunity to give back to the institution that has meant so much to me." (*Id.* at 88a-90a).

3) Additionally, Judge Wiseman's son, Thomas A. Wiseman III, who is also a graduate of Vanderbilt University, currently teaches trial advocacy at Vanderbilt University, and is an attorney at a law firm that represents Vanderbilt University. (*Id.* at pp.91a -95a).

4) Judge Wiseman is also part of the Founders Circle, which is the Vanderbilt University Law School's leadership donor society. (*Id.* at pp.96a-112a).[1]

5) Further, Judge Wiseman was awarded the 2007 Sigma Chi award. (Award recipient for Vanderbilt) (*Id.* at pp.140a-141a).

Judge Wiseman never disclosed his and his family's ties to Vanderbilt University to Petitioner so that she could seek his recusal before entry of the judgment against her. Based on Petitioner's discovery of Judge Wiseman's undisclosed conflict of interest, in July 2008, Petitioner filed a motion requesting permission from the Sixth Circuit to supplement her brief to include a constitutional due process/ denial of fair trial argument based on her discovery of Judge Wiseman's undisclosed conflict of interest. The Sixth Circuit denied Petitioner's request, and refused to vacate the judgment, reasoning that the appellate court would not consider the argument because it was not presented to the District Court first. (Appendix B at pp. 26a). However, Petitioner could not have presented the issue to the District Court prior to the final judgment because Petitioner was unaware of Judge Wiseman's conflict of interest at that time.

The Sixth Circuit's Opinion

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1 However, this affiliation is not disclosed in his financial disclosure reports 2005, 2006, 2007. Canon 5B(2) and (3) states: "A judge may attend fund-raising activities of the organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event" (Appendix E at pp. 96a-139a).

On January 28, 2010, the Sixth Circuit issued its opinion, affirming in part, and vacating in part, the judgment against Petitioner. The Sixth Circuit vacated the District Court's dismissal of Petitioner's retaliation claims based upon Respondent's refusal to include Petitioner on his Methamphetamine Grant and the Risperidone Contract. (App. A at pp.17a-22a). The Sixth Circuit ordered that the case be remanded for a new trial on these claims.

Additionally, the Sixth Circuit rejected Petitioner's argument that she was denied equal protection/due process in the form of a fair trial based on Judge Wiseman's evidentiary ruling against her admitting evidence of her sexual history at trial. (App. A at pp.12a-13a). Critically, on appeal, Petitioner urged the Sixth Circuit to find that she was denied a fair trial because Respondent was specifically permitted to ask her about her past sexual partners and whether she in fact had sexual relations with certain men. The latter issue and line of questioning is distinct from Respondent being allowed to ask Petitioner what she disclosed to Respondent, if anything, about her romantic relationships. Said differently, asking Petitioner what information she shared with Respondent about men she once dated is a far different line of questioning than asking Petitioner whether she had sexual relations with those men. Nevertheless, the Sixth Circuit sanctioned the District Court's unfairly prejudicial Fed.R.Evid. 412 ruling against Petitioner. The Sixth Circuit ruled that:

> The district court did not err in permitting testimony that Riccardi told Respondent about her prior sexual relationships. Though "evidence offered to prove" any alleged victim's "other sexual behavior" or "sexual predisposition" is generally inadmissible, the district court may allow such evidence if "its probative value substantially outweighs the danger of harm to

> any victim and of unfair prejudice to any party." Fed. R. Evid. 412(a)(1)–(2), (b)(2). Respondent's defense to Riccardi's allegations was that the two were in a consensual sexual relationship. Eliciting testimony about what Riccardi told Respondent about her past sexual relationships, then, was probative as to whether the two had the type of personal relationship in which Riccardi would disclose intimate details of her personal life. We cannot say that the district court exceeded its discretion in determining that the probative value of evidence going to the linchpin of Respondent's defense substantially outweighed the potential for unfair prejudice to Riccardi.

(App. A at pp.12a).

After the Sixth Circuit issued its mandate to the District Court to proceed with a trial on Petitioner's retaliation claims, on March 5th 2010, Petitioner filed a motion with the District Court requesting Judge Wiseman's recusal based on his undisclosed conflict of interest. On March 9, 2010, Judge Wiseman issued an order recusing himself from the case, thus confirming his conflict of interest in violation 28 U.S.C 455(a). (App. E at pp.143a).

REASONS FOR GRANTING THE PETITION

1. The Sixth Circuit's Sanction Of The District Court's Fed.R.Evid. 412 Ruling Admitting Evidence Of Petitioner's Sexual History At Trial Was Against Judicial Precedent, Violated The Purpose of Fed. R. Evid. 412, And So Far Departed From The Accepted And Usual Course Of Judicial Proceedings, As To Call For An Exercise Of This Court's Supervisory Power

Evidence of Petitioner's sexual history should have been excluded under both Fed.R.Evid. 412(a) and 412(b)(2). Pursuant to FED. R. EVID. 412(a), evidence offered to prove that an alleged victim engaged in other sexual behavior, or to prove an alleged victim's sexual predisposition, is inadmissible in any civil or criminal proceeding involving alleged sexual misconduct. Fed.R.Evid. 412(a) applied to this case because Petitioner alleged that Respondent physically attacked and attempted to rape her and sexually harassed her prior to that time. (App. E at 144a-163a). Despite Rule 412(a)'s clear cut inadmissibility rule, and Respondent's admission, as evidence by the title of his motion and its content, that he sought to introduce the evidence for the purpose of showing Petitioner's sexual predisposition, the District Court allowed the evidence to be admitted at trial and, consequently, denied Petitioner equal protection of the law and/or due process in the form of a fair trial. (App.E at pp. 181a-190a and App. D at pp. 65a-68a).

Moreover, evidence of Petitioner's sexual history should have been excluded under FED. R. EVID. 412(b)(2), which states that "evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party."

Under FED. R. EVID. 412(b)(2), the evidence should have been excluded because there was no probative value in asking Petitioner whether she had sexual relations with certain men.

See Socks-Brunot v.Hirschvogel Inc., 1999 U.S. Dist. LEXIS 626 *10-11 (S.D. Ohio Jan. 21, 1999) (whether woman entered into consensual sexual relationships with anyone else is not probative of whether she consented to a sexual relationship with accused harasser.)

Far beyond the type of evidence the Sixth Circuit found to be probative, (i.e., what Petitioner told Respondent about her past sexual relationships was probative as to whether the two had the type of personal relationship in which Petitioner would disclose intimate details of her personal life), the District Court allowed the Respondent to ask Petitioner about her sexual history and whether she actually slept with certain men. (App. E at pp. 191a-199a). Asking Petitioner what information she shared with Respondent about her past relationships, if any, is a far different line of questioning than asking Petitioner whether she had sexual relations with those men. The District Court should have shielded Petitioner from the prejudice and embarrassment of having to disclose details of her sexual history since this information was not probative of whether Petitioner had a sexual relationship with Respondent.

Furthermore, the evidence should have been excluded under FED. R. EVID. 412(b)(2), because the unfair prejudice (i.e., gender sexual stereotyping) that resulted to Petitioner from this testimony substantially outweighed any probative value and the result was the denial of due process to Petitioner.

In *Socks-Brunot v.Hirschvogel Inc.*, 1999 U.S. Dist. LEXIS 626 *10 (S.D. Ohio Jan. 21, 1999), the court explained that "[w]hile relevant evidence is generally admissible under Federal Rule of Evidence 403, evidence subject to Rule 412 is **presumptively inadmissible**, even when offered to disprove 'unwelcomeness' in a sexual harassment case." *Id.* at *15 (emphasis added). The court stated the following:

> The defendant may not offer evidence that the employee had engaged in sexual conduct with

> other co-workers or supervisors. Such evidence is both intrusive and, as importantly, without any relevance. Employees are free to engage or not engage in amorous conduct with co-workers. The fact that an employee entered into a consensual relationship with one co-worker or supervisor does not mean that he or she has invited *quid pro quo* demands from a supervisor. That Federal Rule of Evidence 412 prohibits such testimony is beyond debate. *Id.* at *10-11.

In *Socks-Brunot*, the court imposed the remedy of granting Petitioner a new trial because the "inadmissible evidence combined with the highly prejudicial content of the testimony convince[d] the court that the Petitioner was denied a fair trial." *Id.* This case is analogous to *Socks-Brunot*, and the Sixth Circuit erred in failing to vacate the judgment on the basis that Petitioner was denied a fair trial because the jury was prejudiced against Petitioner by the evidence of her sexual history.

Countless other courts have also held that Fed.R.Evid. 412 shields a Petitioner in a sexual harassment case from the prejudice and embarrassment that would result from disclosing facts about her sexual history and/or conduct. *See e.g. Holt v. Welch Allyn, Inc.*, 2000 WL 98118 (N.D. N.Y. January 11, 2000) (in Title VII sexual harassment case, court held that evidence governed by Rule 412 regarding evidence of nonwork-related sexual conduct was inadmissible); *Williams v. Bd. of County Commissioners*, 192 F.R.D. 698, 704 (D. Kan. 2000) (in sexual harassment lawsuit, Petitioner not required to answer interrogatory seeking information about sexually transmitted diseases, the age at which she first had intercourse and the names and addresses of those persons with whom she had been sexually active within the last five years; court found that

marginal relevance of information sought was outweighed by potential harm to Petitioner including unjustified invasion of privacy, potential for public and private embarrassment and likelihood of significant prejudice based on improper sexual stereotyping); *Howard v. Historic Tours of America*, 177 F.R.D. 48, 51 (D. D.C. 1997) (Petitioner in sexual harassment action was not compelled to answer interrogatory asking whether she had sexual relationships with employees not named as harassers; court stated that "[o]ne of the purposes of Fed.R.Evid. 412 was to reduce the inhibition women felt about pressing complaints concerning sexual harassment because of the shame and embarrassment of opening the door to an inquiry into the victim's sexual history. This shame and embarrassment . . . exists equally at the discovery stage as at trial and is not relieved by knowledge that the information is merely sealed from public viewing"); *Priest v Rotary,* 98 FRD 755 (ND Cal 1983)(in Title VII sexual harassment case, information sought by the employer regarding the waitress' past sexual behavior was not discoverable and noting that a Petitioner's past sexual behavior was more often harassing and intimidating than genuinely probative and that the potential for prejudice outweighed whatever probative value such evidence might have; thus, the court concluded that in civil suits for sexual harassment, and absent extraordinary circumstances, inquiry into such areas should not be permitted either in discovery or at trial); *E.E.O.C. v. Danka Industries, Inc.,* 990 F. Supp. 1138 (E.D. Mo. 1997)(information regarding employee's past sexual history with persons not employed by defendant employer was not discoverable in Title VII sexual harassment action); *Mitchell v Hutchings,* 116 FRD 481(DC Utah 1987)(Evidence sought by defendants in Title VII sexual harassment action was not admissible "habit" evidence, but inadmissible character evidence, where, because amenability of Petitioners to sexual advances from other than coworkers is irrelevant to proscribed sexual harassment, evidence would constitute wholesale inquiry into past sexual conduct.) *See also United States v Ramone*, 218 F3d 1229 (10th Cir, 2000), *cert. den.*, 531 US 1026 (2000) (excluding sexual conduct evidence because any limited probative value was outweighed by prejudice, confusion, and

potential for misleading jury, since it likely would have focused jury's attention on victim's prior unusual sexual practices rather than on crucial issue of whether Petitioner consented to sexual activity on night in question).

Consequently, the Sixth Circuit's sanction of the District Court's prejudicial Fed.R.Evid. 412 ruling, which was against judicial precedent, and violated the purpose of Fed.R.Evid. 412,[2] and was so far departed from the accepted and usual course of judicial proceedings, warrants the granting of this Petition for this Court to exercise its supervisory power.

Moreover, the Sixth Circuit's ruling creates a dangerous precedent which will be used by savy defendants and their attorneys against women pursuing sexual harassment and retaliation claims. Based on the lower courts' rulings, a defendant need only concoct a story that the woman accusing him of sexual harassment told him that she had relationships with other men in order to receive from the court a free pass at trial to ask the woman specific details about her sexual experiences and or conduct. This free pass is a one-way ticket to a defense verdict and a substantial set-back to the women's movement, the purpose behind Federal Rule 412, and rape shield laws across the country. Consequently, for this reason of national significance, the Petition should be granted.

2. The Sixth Circuit's Ruling Denying Petitioner's Request To Present A Due Process Denial Of Fair Trial Argument Based On District Court Judge Wiseman's Undisclosed Conflict of Interest In Violation of 28 USC §455(a) Presents The Court With An Opportunity To Resolve A Conflict Among The Circuit Courts Of Appeals On An Important Federal Question, And Presents An Issue Of General Public Importance In The Administration

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2 The court in *Socks-Brunot* noted that the former Rule 412 "was designed to protect rape victims from intrusive and prejudicial questioning as to other sexual conduct or predisposition in the course of a criminal trial or hearing," (1999 U.S. Dist. LEXIS 626 at *7), and that the current Rule 412 "applies the same logic to civil lawsuits involving claims of 'sexual misconduct'." *Id.* at *8.

Of Justice And The Public's Perception Of The Judiciary Calling For An Exercise of This Court's Supervisory Powers

This Petition should be granted because it affords the Supreme Court the opportunity to resolve a conflict among the Circuit Courts of Appeals as to whether an appellate court can exercise original jurisdiction to decide whether a District Court Judge has violated 28 USC §455(a), and whether the violation warrants the remedy of vacating the judgment, under circumstances where the District Court judge did not disclose the conflict of interest and it was not discovered until after judgment was entered.

Additionally, this Petition should be granted because it presents an issue of general public importance in the administration of justice and the public's perception of the integrity of the judiciary.

Finally, this Petition should be granted because by refusing to consider whether Judge Wiseman violated 28 USC §455(a), and whether the violation warranted the remedy of vacating the judgment, the Sixth Circuit sanctioned the District Court's unlawful conduct which so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

Other Courts Of Appeals Have Exercised Original Jurisdiction To Oversee The Administration Of Justice And Ensure Due Process

The Sixth Circuit erred in denying Petitioner's request for it to consider evidence of Judge Wiseman's conflict of interest in violation of 28 USC §455(a) and Petitioner's due process denial of fair trial argument. The Sixth Circuit should have addressed this issue and vacated the judgment against Petitioner despite the fact that Petitioner did not have an opportunity to present the issue to the District Court prior to final judgment. Petitioner did not have this opportunity because she only discovered Judge

Wiseman's conflict of interest after final judgment was entered against her.

The Sixth Circuit's ruling conflicts with other Courts of Appeals' decisions holding that the failure to move for recusal at the trial level does not preclude raising the issue on appeal. *See Noli v. Commissioner*, 860 F.2d 1521, 1528 (9th Cir. 1988) (failure to move for recusal at the trial level does not preclude raising on appeal the issue of recusal under 28 U.S.C. §455); *Mixon v United States*, 620 F.2d 486 (5th Cir. 1980) (vacating judgment and remanding case where the magistrate who determined petition was automatically disqualified under *28 USCS § 455*, even though disqualification was neither noticed by magistrate nor called to his attention by counsel.")

In an analogous case, where the trial court judge should have recused himself pursuant to 28 USCS § 455, but did not, and the conflict went undisclosed until the time of appeal, the Fifth Circuit addressed the conflict issue for the first time on appeal and vacated the judgment even though the conflict of interest issue was never raised at the trial level. *See Mixon v United States*, 620 F.2d 486 (5th Cir. 1980).

The *Noli* and *Mixon* decisions demonstrate that especially where, as here, a party does not know of the existence of a judge's conflict of interest until after final judgment is entered, the appellate court should have the authority to exercise original jurisdiction to oversee the administration of justice and ensure due process is afforded to all litigants.
Consequently, the Supreme Court should grant this Petition in order to resolve the conflict amongst the Courts of Appeals on this important federal due process issue.

The Appropriate Remedy For The District Court's Violation Of 28 U.S.C. § 455(a) Is to Vacate The Judgment

Had the Sixth Circuit considered Petitioner's argument concerning Judge Wiseman's disqualification under 28 USC § 455, the circumstances here would have required the Sixth

Circuit to find a violation of that statute and to vacate the judgment.

28 USC § 455 defines the circumstances that mandate the disqualification of federal judges, and, in particular, 28 USC § 455(a) disqualifies a federal judge from acting in any proceeding in which the judge's impartiality "might reasonably be questioned." *See* 28 USC § 455(a). "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Services Aqusitions Corp.*, 486 U.S. 847, 865 (1988) (affirming decision to vacate judgment pursuant to Fed.R.Civ.P. 60(b)(6), even under circumstances where the district court judge was unaware of his conflict of interest, because a violation of § 455(a) does not depend upon whether the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that the judge knew of the facts). *See also United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased."); *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989) ("Section 455(a) of the Judicial Code, is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process."); *United States v Gigax*, 605 F2d 507 (10th Cir. 1979)(in determining whether a judge should recuse under 28 USCS § 455(a), issue is not whether judge is impartial in fact, but rather whether reasonable man might question impartiality under all circumstances); *Levine v. United States*, 362 U.S. 610 (1960) ("justice must satisfy the appearance of justice").

Courts have recognized that because the touchstone of recusal is the integrity of the judiciary, prejudice is presumed once the appearance of partiality is shown.

Judge Wiseman Violated 28 USC § 455(a) By Failing To Recuse Himself

Judge Wiseman's close ties with Defendant Vanderbilt mandated his disqualification from this case because his

"impartiality might reasonably be questioned". *See* 28 USC § 455(a). Any objective member of the public would have reasonably believe that Judge Wiseman was aware of his and his family's close ties to Vanderbilt at the time he presided over the case. Further, any objective member of the public would have questioned Judge Wiseman's impartiality as a result of the fact that Vanderbilt was a Defendant in the case and Defendant Respondent, is a world renowned scientist employed by Vanderbilt. *See Liljeberg*, 486 U.S. at 868-869.

Judge Wiseman violated 28 USC § 455(a) by failing to disclose his close ties to Vanderbilt University and failing to recuse himself as required by 28 USC § 455. *See Liteky v United States*, 510 US 540 (1994) (28 USCS § 455 places an obligation upon judges to identify the existence of bias or prejudice grounds of recusal, rather than requiring recusal only in response to party affidavit); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101 (5th Cir. 1980) (vacating judgment in Petitioner's favor, ordering new trial before new judge and jury, and finding that 28 U.S.C. 455 required the judge to recuse himself where the judge's father was a senior partner in Petitioner's attorney's law firm, thus presenting a situation in which the judge's impartiality might be questioned), *cert. denied*, 449 U.S. 820 (1980); *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989)(Section 455(a) "requires a judge to recuse himself in any proceeding in which his impartiality might reasonably be questioned."); *Obert v Republic W. Ins. Co.*, 190 F. Supp. 2d 279 (DC RI 2002), modified, 398 F.3d 138 (1st Cir. 2005) (violation of 28 USC § 455(a) requires a judge's sua sponte recusal because it is the judge's duty to ensure that his or her presence does not taint the process of justice or integrity of United States Courts); *In re Kensington Int'l, Ltd.*, 368 F3d 289 (3rd Cir. 2004) (Test for recusal under *28* USCS § 455(a) is whether reasonable person, with knowledge of all facts, would conclude that judge's impartiality might reasonably be questioned.)

Judge Wiseman's Undisclosed Conflict Prejudiced Petitioner And Resulted In The Denial Of A Fair Trial; Therefore, The Judgment Against Petitioner Should Be Vacated

Pursuant To Federal Rule of Civil Procedure 60(b)(6)

If Judge Wiseman would have disclosed his close relationship with Vanderbilt, Petitioner would have sought his recusal prior to entry of judgment against her. Judge Wiseman's failure to disclose the conflict deprived Petitioner of due process and the opportunity for a fair trial. *See United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based on the Due Process Clause.").

Federal Rule of Civil Procedure 60(b) provides a procedure whereby, in appropriate cases such as this, a party may be relieved of a final judgment. In particular, Rule 60(b)(6) grants federal courts broad authority to relieve a party from a final judgment "upon such terms as are just," provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5).

Fed.R.Civ.P. 60(b) does not particularize the factors that justify vacating a final judgment, however, this Court has explained that the Rule provides courts with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," while also cautioning that it should only be applied in "extraordinary circumstances." *See Liljeberg*, 486 U.S. 847, 864 (1988), *citing*, *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949) and *Ackermann v. United States*, *340 U.S. 193* (1950).

Several courts have held that extraordinary circumstances sufficient to warrant Rule 60(b)(6) relief from a final judgment are presented where, as here, a district court judge is disqualified from hearing a case pursuant to 28 USC § 455(a), based on a conflict of interest which existed at the time the judge heard the action, but was never disclosed by the judge and was only discovered after judgment was entered. *See Liljeberg v. Health Services Aqusitions Corp.*, 486 U.S. 847 (1988) (affirming decision to vacate judgment pursuant to Rule 60(b)(6), because of the district court judge's undisclosed conflict

of interest, which was only discovered after final judgment was entered); *Wheeler v. McDonough*, 210 Fed. Appx. 988 (11th Cir Dec. 19, 2006) (reversing the district court's denial of Wheeler's Rule 60(b)(6) motion to vacate based on the district court's judge's conflict of interest, and ordering that Wheeler's petition be reinstated *nunc pro tunc* as of the date of its original filing; and that it be assigned to a different district court judge); *Russell v. Lane*, 890 F.2d 947, 949 (7th Cir. 1989)(Rule 60(b)(6) could be used in appropriate cases to vacate orders made by a judge who later recused himself, if the ground for recusal existed at the time those orders were made).

In *Liljeberg,* this Court set forth factors to be considered in determining whether a final judgment should be vacated for a violation of 28 USC § 455(a). *See Liljeberg*, 486 U.S. at 864. The Court explained that it is appropriate to consider: (1) the risk of injustice to the parties in the particular case; (2) the risk that the denial of relief will produce injustice in other cases; and (3) the risk of undermining the public's confidence in the judicial process. *Id.* The Court further cautioned that "[w]e must continuously bear in mind that 'to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *Id., citing*, *In re Murchison*, 349 U.S. 133, 136 (1955).

As in *Liljeberg,* these factors warrant granting the Rule 60(b)(6) motion and vacating the judgment in this case. *See Liljeberg*, 486 U.S. 847, 868-869. First, there is a greater risk of unfairness to Petitioner in upholding the judgment in favor of Respondent than there is in allowing a new judge to take a fresh look at the issues. *Id.* at 868. Judge Wiseman's bias in favor of Vanderbilt, and Respondent Kessler, an employee of Vanderbilt, must be presumed based on his conflict of interest and close ties to the school. This presumption alone warrants the vacatur of the judgment.

Additionally, Judge Wiseman's actual bias was demonstrated by the fact that he threw out all of Petitioner's claims as a matter of law, except for Petitioner's battery claim, when he should not have ruled on the case at all. *See Russell v.*

Lane, 890 F.2d 947, 949 (vacating judgment where two-thirds of Petitioner's case was thrown out in the most summary fashion possible by a judge who should have not ruled on the case at all due to his conflict of interest).

Judge Wiseman's bias was also exhibited by his prejudicial evidentiary rulings, including, but not limited to, his Fed. R. Evid. 412 decision to permit Respondent to question Petitioner about her sexual history at trial, which was in conflict with judicial precedent and resulted in unfair prejudice to Petitioner at trial, denying her due process right to a fair trial.

Judge Wiseman's bias was further established by virtue of the fact that the Sixth Circuit overruled his judgment in favor of Respondent on Petitioner's retaliation claims concerning the Risperidone and Methamphetamine grants.

Moreover, Judge Wiseman's failure to disclose his close ties with Vanderbilt denied Petitioner justice and prevented her from seeking his recusal prior to final judgment. *See Liljeberg*, 486 U.S. 847, 868-869 (noting that district court judge's silence about conflict of interest, that he should have known about and should have disclosed, deprived the Defendant of a basis for making a timely motion for a new trial, and was a reason to vacate the judgment.)

Also, as this Court reasoned in *Liljeberg*, providing relief in cases such as this will not produce injustice in other cases; to the contrary, vacating the judgment pursuant to Rule 60(b)(6) and enforcing § 455 may prevent a substantive injustice in some future case by encouraging a judge to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered. It is therefore appropriate to vacate the judgment. *See Liljeberg*, 486 U.S. at 868.

Additionally, under the facts presented here, the risk of undermining the public's confidence in the judicial process is high if the judgment is not vacated. Judge Wiseman's violation of 28 USC § 455(a) is neither insubstantial nor excusable. Any

objective member of the public would reasonably believe that Judge Wiseman was aware of his close ties to Vanderbilt at the time he presided over the case. Further, any objective member of the public would have questioned Judge Wiseman's impartiality as a result of his close ties to Vanderbilt. *See Liljeberg*, 486 U.S. at 868-869. Judge Wiseman's failure to recuse himself was inexcusable, and a failure to vacate the judgment would further risk undermining the public's confidence in the judicial process. *See Liljeberg*, 486 U.S. at 868-869.

Finally, under these circumstances, Petitioner, proceeding pro se, has satisfied the requirements of Fed.R.Civ.P. 60(b)(6), by seeking to vacate the judgment in a "reasonable time." Petitioner only discovered Judge Wiseman's close ties with Vanderbilt after judgment was entered against her and after she submitted her appellate brief to the Sixth Circuit. Petitioner immediately requested the Sixth Circuit to consider this issue and vacate the judgment, however, the Sixth Circuit refused. Thus, under these circumstances, the Petition should be granted and judgment vacated.

CONCLUSION

For all the above stated reasons, Petitioner respectfully requests the Court to grant her Petition for a Writ of Certiorari.

Respectfully submitted,

Patrizia Riccardi, Pro Se

Supreme Court, U.S.
FILED
APR 28 2010
OFFICE OF THE CLERK

No. 10-107

In The
Supreme Court of the United States

October Term, 2010

DR. PATRIZIA RICCARDI,

Petitioner,

v.

DR. ROBERT KESSLER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A – ORDER ISSUED BY THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT, DATED/FILED JANUARY 28, 2010

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 10a00540.06

No. 08-5234

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ROBERT KESSLER, Plaintiff-Appellee,	) ON APPEAL FROM) THE UNITED) STATES DISTRICT
v.	) COURT FOR THE) MIDDLE DISTRICT OF
PATRIZIA RICCARDI, Defendant-Appellant.	) TENNESSEE)

FILED
Jan 28, 2010
LEONARD GREEN, Clerk

Before: NORRIS, CLAY and SUTTON, Circuit Judges.

SUTTON, Circuit Judge. Dr. Patrizia Riccardi sued Dr. Robert Kessler, alleging that he retaliated against her after she reported him for sexual harassment. Kessler, in turn, sued Riccardi for defamation, alleging that her reports against him

were false and damaged his reputation and mental health. Kessler prevailed in both suits, and Riccardi, now proceeding **pro se,** claims the district court erred by: (1) granting partial summary judgment to Kessler on her retaliation claim; (2) resolving three evidentiary motions incorrectly; (3) granting Kessler's pre-verdict motion for judgment as a matter of law on the remainder of her retaliation claim; and (4) denying her postverdict motion for judgment as a matter of law on Kessler's defamation claim. We affirm, except with regard to the pre-verdict judgment as a matter of law on the retaliation claim, which we reverse and remand.

I.

Riccardi, a psychiatrist, began a medical-research fellowship in the Radiology Department at Vanderbilt University in September 2003. She worked under the direct supervision of Kessler, a radiology and psychiatry professor. When Riccardi accepted a part-time faculty position in July 2004, she agreed to fund a percentage of her salary with grant money, which she could accomplish either by obtaining her own grants or by contributing to the grants of other faculty members, who would then allocate a portion of their grant funding to her salary.

During Riccardi's first two years at Vanderbilt, she worked almost exclusively with Kessler, researching a number of mental-health

disorders using Positron Emission Tomography, a neuroimaging technology. Riccardi claims she came to Vanderbilt specifically to work with Kessler, as he was a recognized scholar in PET imaging, the field in which she too wanted to specialize. As Riccardi understood it, Kessler planned to include her on all of his grants and help her with grants of her own so that she could reach her funding goal.

The nature of Riccardi and Kessler's relationship differs dramatically depending on whom you ask. Riccardi alleges that Kessler began sexually harassing her in November 2003, which gradually worsened and culminated in an attempted rape in June 2005 when they were in Toronto attending a professional conference. Kessler denies these allegations, contending that the two began an on-again-off-again affair in January 2004 that lasted until June 2005, and that he, not Riccardi, was the victim of the physical altercation in Toronto.

The Toronto incident prompted Riccardi to report allegations of Kessler's sexual harassment and attempted rape to Vanderbilt in June 2005. University authorities conducted an investigation, ultimately concluding that the evidence was insufficient to substantiate Riccardi's claims. During the investigation, Kessler told Vanderbilt authorities that he and Riccardi had engaged in a consensual sexual relationship. The university thereafter strictly limited Kessler's interaction with Riccardi, instructing him to avoid being alone with her and

not to communicate with her directly. Because much of Riccardi's work required the assistance or supervision of Kessler, the parties worked out a system whereby Riccardi and Kessler would communicate by e-mail and copy each other's attorneys on all of their messages.

In June 2006, Riccardi filed a sexual harassment complaint that named Vanderbilt, Kessler and radiology department chair Dr. Martin Sandler as defendants. She raised a state-law claim for retaliation against Kessler individually, along with claims for battery and intentional infliction of emotional distress stemming from the physical altercation in Toronto. Kessler countersued, alleging defamation as well as assault and battery claims based on the Toronto incident. Riccardi settled her claims against Vanderbilt and Sandler before trial.

Riccardi alleged—and continues to claim on appeal—that Kessler unlawfully retaliated against her by inadequately supporting her grant-writing efforts and by refusing to include her on a number of his own grant proposals. The district court granted partial summary judgment to Kessler regarding his conduct on five of the grants, finding that Kessler presented legitimate non-retaliatory reasons for his actions and that Riccardi had not shown a genuine factual issue as to whether the stated reasons were pretextual. As for his conduct on two of the research projects, however, the district court found that Riccardi established a question of fact sufficient to

warrant a trial.

With the issues whittled down to Riccardi's remaining two allegations of retaliatory conduct, Kessler's defamation claim and both of their personal-injury claims, the case proceeded to trial. At the close of the evidence and before the case went to the jury, the district court granted Kessler's motion for judgment as a matter of law on Riccardi's remaining two allegations of retaliation, determining that Riccardi neither established that she suffered any adverse action nor demonstrated that the explanations Kessler gave for his conduct were pretextual.

The jury found in Kessler's favor across the board, awarding him $15,000 in damages for battery,$10,000 in compensatory damages for assault, $500,000 in actual monetary damages for defamation, $1,500,000 in other compensatory damages for defamation and $950,000 in punitive damages. App. 1236-39.

Riccardi filed a post-verdict motion for judgment as a matter of law, claiming that Kessler failed to present evidence of actual damages resulting from the defamatory statements. In the alternative, she requested a new trial or a remittitur of the compensatory and punitive damages for defamation. The court granted her motion with respect to the $500,000 in actual monetary damages but denied it as to the other compensatory damages

and the punitive damages, on the condition that Kessler accept a remittitur decreasing thecompensatory damages award from $1,500,000 to $250,000 and the punitive damages award from $950,000 to $250,000. Kessler accepted the remittitur and the district court entered a final judgment.

II.

Riccardi first claims that the district court erred in granting partial summary judgment to Kessler on her retaliation claim. Tennessee state law prohibits individuals from "retaliat[ing] or discriminat[ing] in any manner against a person because such person has opposed a [discriminatory] practice." Tenn. Code Ann. § 4-21-301. A plaintiff alleging a retaliation claim under the statute must, as with a Title VII claim, show "(I) that she engaged in activity protected by the THRA; (2) that the exercise of her protected civil rights was known to the defendant; (3) that the defendant thereafter took a materially adverse action against her; and (4) [that] there was a causal connection between the protected activity and the materially adverse action." *Allen* v. *McPhee,* 240 S.W.3d 803, 820-21 (Tenn. 2007). If the plaintiff makes the required showing, the burden shifts to the defendant "to articulate a legitimate, non-discriminatory reason for" the adverse action. *Id.* at 821. And if the defendant satisfies that burden, the burden shifts back to the plaintiff, who "must present evidence demonstrating that the articulated reason is pretextual and that

the defendant's action was actually motivated by a desire to retaliate against the employee." *Id.*

Kessler does not dispute that Riccardi demonstrated the first two elements of her retaliation claim-reporting her allegations to Vanderbilt and filing a complaint against Kessler amounted to protected activities and Kessler knew about them. See R.133, 35. As for the five allegedly retaliatory actions on which the district court granted summary judgment, however, Riccardi's attempt to show retaliation falters after that point.

A.

Riccardi alleges that Kessler retaliated against her by"providing inadequate assistance with" her "Sex Differences Grant proposal." Riccardi Br. 45. The facts, as relayed by Riccardi, show that several months after filing suit, Riccardi sought Kessler's assistance as she prepared to submit the grant proposal. Riccardi gave Kessler a draft of the proposal on a Friday, believing that doing so would give Kessler sufficient time over the weekend to review it before the Monday submission deadline. Still awaiting his response on Sunday, Riccardi asked a university employee to call Kessler on her behalf at about 3:00 that afternoon. Kessler responded by emailing Riccardi at 4:20, telling her that he "only now had the opportunity to carefully read" her grant and offering several paragraphs of comments and suggestions. App. 726-28. The eighty

minutes he spent reviewing and commenting on the draft departed from his normal practice of spending one to two days reviewing a grant proposal.

Riccardi has not shown that Kessler's failure to respond more quickly-or more substantively-constituted retaliatory conduct. Regardless of how quickly Kessler reviewed Riccardi's grant, the undisputed facts show that he complied with her request to review her draft and provide comments before the Monday deadline. He suggested ways Riccardi might "give the reviewers greater confidence that [her] study would produce significant results," App. 726-27, pointed her to recent scholarship in the area and highlighted sections that "could be explained more clearly," App. 728. Riccardi has no evidence to substantiate her claim that this critique "was not meaningful and was not provided in good faith." Ricc. Br. 46. And though Kessler ordinarily might have spent more than eighty minutes reviewing grants, Riccardi offers no evidence to show that the explanation he offered for his conduct-that he had not had time to review the grant-was pretextual. Riccardi, not Kessler, imposed the time constraints, and a jury could not reasonably infer that his decision not to spend most of the weekend reviewing her grant constituted retaliatory conduct.

B.

Riccardi claims that Kessler retaliated against her by providing "insufficient assistance" with the

grant proposal she submitted to the NIH to obtain funding to study autism. Ricc. Br. 48. Kessler provided Riccardi with "one page" of comments after reviewing her draft proposal. Ricc. Br. 49. The grant was not funded, and the reviewers commented that the background section was "difficult to follow" and "not cogent," App. 721, and that the entire proposal needed "careful editing," App. 719. As Riccardi sees it, the reviewers' comments demonstrate that Kessler retaliated against her, because he--as an NIH grant reviewer himself-should "have warned [her] that the reviewers would make such comments and suggested meaningful ways to avoid such criticism." Ricc. Br. 49.

Riccardi has not demonstrated that Kessler's supposedly inadequate assistance constitutes an adverse employment action sufficient to sustain a retaliation claim. Kessler's "one page" email—too short to be helpful by Riccardi's estimate-suggested that she correct various organizational and substantive problems, including some of the same problems mentioned by the reviewers. *See, e.g.*, App. 715-16 (suggesting she edit the background section to make it more "tightly focused"). Riccardi offers no evidence that Kessler's feedback amounted to an adverse action: She does not show, for example, that Kessler's comments on grant proposals prior to her complaint were significantly more helpful, nor does she suggest what "meaningful" comments should have looked like.

C.

Riccardi fares no better on her claim that Kessler retaliated against her by refusing to act as the "mentor/sponsor" of her application for a Young Investigator Award sponsored by NARSAD, an organization that funds psychiatric research projects. The NARSAD application requires a "mentor/sponsor letter" "from an on-site mentor/sponsor ... describing the mentor's/sponsor's commitment to facilitate the specific research proposal." R.82-2,2-3. Kessler declined Riccardi's request that he assume that role, stating that, light of their strained relationship and her refusal "to communicate with [him] except by email," he "d[id] not see how [he] could effectively fulfill the duties required of a Mentor/Sponsor for this project." App.730. Based on his own experience as a member of the NARSAD scientific council as well as a conversation with a "senior member" of the organization, he believed that he "would be required to disclose [their situation] to NARSAD" a Mentor/Sponsor's letter, which could have threatened her chances of receiving the grant. R.82, ¶19.

Riccardi challenges the district court's conclusion that these were legitimate, non-retaliatory reasons for declining her request. She says that his reason for declining the mentor/sponsor role *must* be pretextual because the limits on their communication did not hamper other projects they worked on together. But evidence about other

projects does not help her show pretext, because the record shows that the NARSAD mentor/sponsor role is more intensive than an ordinary co-investigator role. *See* R. 82, ~ 19, *see also* App. 729. Riccardi rejoins that she did not ask Kessler to be her "mentor," just her "senior collaborator," which purportedly would not have required as much one-to-one contact. Ricc. Br. 51-52. No matter the title, she does not dispute that Kessler would have had to submit a letter outlining his plans to support her project and disclosing their limited ability to communicate. Her only response is that Kessler obtained much of his understanding about the role of a mentor/sponsor from conversations with an undisclosed member of NARSAD, which Riccardi classifies as inadmissible hearsay inappropriate for consideration in a summary judgment ruling. But because Kessler testified about his conversation with a senior member of the NARSAD council to show the basis of his belief that he could not help her, not for the truth of the matter asserted, the conversation is not hearsay and the district court did not err in considering it. *See* Fed. R. Evid. 801 (c).

D.

Riccardi claims that Kessler retaliated by not naming her as a co-investigator on his Vanderbilt Discovery Grant proposal for a project on "dopamine and depression." Ricc. Br. 55. "[I]t was a very small grant," Kessler explains, "with a very limited budget and only the very most essential people could be

included on it," R.89-2 at 837, he "had to have someone from the psychiatry department who would recruit the depressed subjects" and "[t] here was not enough money in the budget for anyone else." R.89-2 at 837. addition, "the grant program required participation by two Vanderbilt departments," so "the ... investigator on the budget [other than Kessler] had to be from a department other than radiology"—the department in which Kessler and Riccardi worked. R.82, ¶23. He added that, at the time he prepared the grant, "collaboration" with her "had been exceptionally difficult," presumably because of the restrictions placed on their interaction, R89-2 at 837, and explained that the project was small enough that he would perform the PET scans himself. *Id.* Other than claiming that this grant was related to a larger NIH grant on which she was a co-investigator and that she would have worked for free, Riccardi offers no evidence to show that these non-retaliatory reasons were pretextual. Ricc. Br. *56*—7.

E.

Riccardi argues that Kessler wrongfully withdrew his support of her "Borderline Personality Grant" proposal "as a result of [her] complaint." Ricc. Br. 41—42. According to Riccardi, Kessler agreed to serve as her co-investigator for the grant in March 2005, several months prior to her June 2005 complaint to Vanderbilt authorities. He reviewed the draft proposal, provided Riccardi with feedback and even offered her money from his own grant funding

so that Riccardi could obtain preliminary data for her proposal. Riccardi finished her proposal by June 2005, but decided to wait to submit it until the next funding cycle rolled around in early 2006.

As she prepared to submit her proposal during January and February of 2006, Riccardi, through Kessler's secretary, asked Kessler to confirm that he would serve as co-principal investigator signing paperwork for the proposal. Kessler's attorney informed Riccardi that Kessler "[did] not intend to do this." App.635. Riccardi submitted the grant without Kessler's (or any other faculty member's) assistance, and the grant was not funded. One grant reviewer commented on her junior status, noting her failure to list "either an established psychiatric co-investigator, or a PET co-investigator ... as part of her team." App.704.

Kessler provides a legitimate non-retaliatory reason for his refusal. The project, Kessler says, involved administering medicine that could exacerbate the test subjects' underlying conditions, and he was concerned about patient safety. In. addition, he claims that Riccardi did not provide him a copy of the proposal in January 2006, so he could not, without running up against ethics rules, sign off without thoroughly reviewing and understanding the "essential aspects" of her project. R.82, ¶15. These reasons must be pretexual, Riccardi insists, because Kessler reviewed the proposal approximately ten months earlier and agreed to

serve as co-investigator without any mention of safety or ethical concerns. But this argument does not satisfy her burden of showing pretext, as she has not offered proof that the proposal remained in the same form as it was in June 2005, claimed that she provided Kessler with a copy of the grant in January 2006 or shown that it would have been ethically appropriate for Kessler to sign off on the proposal without re-reviewing it.

Riccardi suggests her reply brief that Kessler's safety concerns about the grant are pretextual because Kessler "agreed to serve as co-investigator on two of[her] other grants ... which were similar in nature to the [grant] in terms of any potential 'safety issues. '" Ricc. Reply 3. Because she did not raise this point in the district court or in her initial brief, she has forfeited it. *See Moulton v. U.S. Steel Corp.*, 581 F.3d 344,354 (6th. 2009).

III.

Riccardi challenges three of the district court's evidentiary rulings, which we review for abuse of discretion. See Biegas v. Quickway Carriers, Inc., 573 F.3d 365,378 (6th Cir. 2009).

A.

The district court did not err in permitting testimony that Riccardi told Kessler about her prior sexual relationships. Though "evidence offered to

prove" any alleged victim's "other sexual behavior" or "sexual predisposition" is generally inadmissible, the district court may allow such evidence if "its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party." Fed. R. Evid. 412(a)(1)-(2), (b)(2). Kessler's defense to Riccardi's allegations was that the two were in a consensual sexual relationship. Eliciting testimony about what Riccardi told Kessler about her past sexual relationships, then, was probative as to whether the two had the type of personal relationship in which Riccardi would disclose intimate details of her personal life. We cannot say that the district court exceeded its discretion in determining that the probative value of evidence going to the linchpin of Kessler's defense substantially outweighed the potential for unfair prejudice to Riccardi. Riccardi's alternative argument that the district court should have excluded the evidence on Rule 404(b) grounds adds no merit to her objection. Rule 404(b) prohibits "evidence of other ... acts" "to prove the character ofa person in order to show action in conformity therewith." Fed. R. Evid. 404(b). It does not, however, bar evidence of prior acts for other purposes–such as to show that Riccardi shared personal details of her life with Kessler.

B.

Nor did the district court abuse its discretion in denying Riccardi's motion to admit evidence that

Kessler shifted assets and accounts to his wife's name and sold property around the time Riccardi made her complaint to Vanderbilt authorities. Riccardi suggests that the evidence should have come in to show that Kessler "engaged in a pattern or scheme to evade responsibility for his actions" once he suspected Riccardi might bring claims against him. Ricc. Br. 69. Even if this evidence could have shown that Kessler wanted to "evade responsibility" by protecting his assets from an unfavorable judgment, it would have been of little relevance to the ultimate issues in this case-whether Kessler committed battery, intentionally inflicted emotional distress or retaliated against Riccardi. The district court therefore did not abuse its discretion in omitting evidence of such attenuated relevance.

C.

Riccardi's remaining evidentiary challenge–that the district court incorrectly permitted "hearsay evidence consisting of statements [Kessler] made to others ... that he had an intimate relationship with [Riccardi]," Ricc. Br. 63-is unavailing. The district court permitted Kessler to testify that he told his boss and his wife that he was having an affair, citing the prior consistent statement exemption from the hearsay rule. See Fed. R. Evid. 80 I (d)(1). An out-of-court statement "consistent with" in-court testimony is admissible under Rule 80I (d)(1) if the out-of-court statement "is offered to rebut an express or

implied charge against the declarant of recent fabrication." Id. Throughout the trial, Riccardi tried to prove that Kessler was lying when he claimed that their relationship had been consensual. Therefore, Kessler offered testimony that he told his wife and his boss of their purported affair months before Riccardi complained to Vanderbilt authorities for the proper purpose of rebutting Riccardi's claim that he lied about the affair to protect himself. No doubt, it is possible that Kessler made up the affair and confessed it to those close to him to take the sting out of Riccardi's future sexual harassment claims, but the theory is sufficiently speculative that we cannot say the district court abused its discretion in rejecting it.

Riccardi gets nowhere with her challenges to other witnesses' testimony regarding what Kessler told them about his relationship with Riccardi. Because her attorneys did not object at trial to Martin Sandler's and Craig Oxford's testimony, she has forfeited this argument. And because her attorneys elicited testimony from Ingrid Kessler about Kessler's out-of-court statements, R.264, 756-57, Riccardi cannot now maintain the court erred in allowing that testimony. See All Am. Life & Cas. Co. v. Oceanic Trade Alliance Council Int '1, Inc., 756 F .2d 474, 479-80 (6th Cir. 1985).

IV.

Riccardi next challenges the district court's

denial of her post-verdict motion for judgment as a matter of law on Kessler's defamation claim. She claims that Kessler did not present a legally sufficient evidentiary basis for a reasonable jury to find that he suffered actual injury as a result of her allegations, which she discussed with other colleagues at Vanderbilt and reported to the American Association of University Women. (She does not contest the sufficiency of the evidence as to any of the other elements of a defamation claim, nor does she argue the reasonableness of the punitive damages award.) Taking, as we must, the "strongest legitimate view of the evidence in favor of' Kessler, we may reverse the district court's denial of Riccardi's motion only if "a reasonable mind could draw but one conclusion": a conclusion in Riccardi's favor. Arms v. State Farm Fire & Cas. Co., 731 F.2d 1245, 1248 (6th Cir. 1984).

To recover damages on a defamation claim under Tennessee law, a party must prove "actual injury" resulting from the allegedly defamatory statements. Memphis Publ'g Co. v. Nichols, 569 S.W.2d 412,417-19 (Tenn. 1978). "[A]ctual injury is not limited to out-of-pocket loss," and may "include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." Id. at 416. But "anger, mere annoyance or loss of peace of mind" may not be sufficient to demonstrate actual injury. See Murray v. Lineberry, 69 S.W.3d 560, 565 (Tenn. Ct. App.2001).

Viewing the evidence in Kessler's favor, a jury could reasonably have concluded that Kessler experienced sufficient anguish, humiliation and suffering as a result of Riccardi's allegations to amount to a compensable "actual injury." Kessler testified that Riccardi's allegations of rape were "extremely stressful"; were "like a cloud that hangs over you and pushes you down and zaps your energy"; made him "depressed somewhat, anxious somewhat" and "unable to work to get [his] funding going"; caused him to "wonder ... how many jobs, positions [he was] not being considered for because people think [he's] a rapist, a crazy person, a sexual harasser"; R.242 at 101-102, and triggered ongoing problems sleeping at night, id. at 139.

In addition to Kessler's testimony, other record evidence lent support to the reasonableness of the jury's conclusion that Kessler's injuries went beyond mere embarrassment, annoyance or anger. Riccardi's allegations, for one, prompted a lengthy internal investigation into Kessler's personal life at Vanderbilt. When she recounted her allegations to the American Association of University Women, the organization posted them on its website. Kessler's colleagues ran across the website and alerted him to it, bolstering the legitimacy of Kessler's belief that the allegations were widely known and that Riccardi's allegations had diminished his reputation. See Myers v. Pickering Firm, Inc., 959 S.W.2d 152, 165 (Tenn. Ct. App. 1997) (finding actual injury in

part because the evidence showed that plaintiff believed his reputation was tarnished by the defamatory statements). light of the web publication and the intensive investigation prompted by Riccardi's complaints, this case is different from Tennessee cases in which the plaintiff suffered only "mere annoyance" or "humiliation" insufficient to prove actual injury. See Handley v. May, 588 S.W.2d 772, 776-77 (Tenn. Ct. App. 1979) (no actual injury when there was "no evidence whatsoever of any impairment of reputation and/or standing in the community" and the evidence showed that plaintiff was "under mental stress and strain independent of the defamatory utterance"); Dowlen v. Mathews, No. M2001-03160-COA-R3-CV,2003 WL 1129558,at*5 (Tenn. Ct. App.Aug. 25, 2003) (no actual injury from defendant's false statements about a police officer because he did not demonstrate harm "ris[ing] above anger, mere annoyance or loss of peace ofmind," nor did he show that the false statements led to the officer undergoing an "internal investigation," "disciplinary action," or any "cuts in pay, demotions or suspensions"). Because the evidence was legally sufficient to sustain a damages award, the district court did not err in denying Riccardi's motion.

V.

Lastly, Riccardi claims that the district court's decision to grant Kessler's pre-verdict motion for judgment as a matter of law on Riccardi's remaining two allegations of retaliation-those surrounding

Kessler's decisions not to include Riccardi on his "Methamphetamine Grant" and on his "Risperidone Contract." When reviewing a judgment as a matter of law in a diversity case, "we apply the same standards the forum state would apply," Tschirav. Willingham, 135F.3d 1077,1087 (6th Cir. 1998), which means "tak[ing] the strongest legitimate view of the evidence in favor of the non-moving party, construing all evidence in that party's favor ... {,] disregarding all countervailing evidence" and reversing the judgment "unless reasonable minds could reach only one conclusion from the evidence." Johnson v. Tennessee Farmers Mut. Ins. Co., 205 S.W.3d 365, 370 (Tenn. 2006). As to both the Methamphetamine Grant and the Risperidone Contract, her challenge has merit.

A.

Kessler submitted the Methamphetamine grant proposal to the NIH in October 2005. It named several other Vanderbilt faculty members as co-investigators but did not include Riccardi. At summary judgment, Kessler offered two non-retaliatory reasons for his conduct: (1) that Riccardi did not have the required expertise in the grant's subject matter; and (2) that the grant's small budget could not accommodate Riccardi. Riccardi countered that these reasons were pretextual, because she had always been on his grants before, even if she did not have the necessary expertise, and because, as the principal investigator, Kessler could have adjusted

the budget to include her or given her the opportunity to work on the grant without giving her a salary. Based on Riccardi's reasoning, the district court identified two issues of material fact that precluded summary judgment: (1) whether Riccardi, regardless of her level of expertise, had been included on all of Kessler's NIH grant proposals involving PET scans up until she complained to Vanderbilt authorities June 2005; and (2) whether Riccardi reasonably expected that Kessler would include her on all of his grants involving PET.

The evidence submitted at trial did not resolve these questions. Kessler testified that from the time Riccardi began work at Vanderbilt in September 2003 until June 2005, Riccardi worked on every grant he submitted. He did not refute Riccardi's claim that her lack of expertise never stopped Kessler from involving her on projects prior to June 2005 or grapple with her point that he cited one of her papers in the grant application, suggesting that she at least had some expertise to offer the study. The evidence presented at trial also did not settle whether Riccardi expected to be included on all of Kessler's PET-related grants. Kessler, in fact, lent some support to the reasonableness of her expectation, agreeing that he "probably" explained to Riccardi before she arrived at Vanderbilt that she would work on his grants, App. 1202. And though Kessler now points to Riccardi's testimony that she worked on another researcher's grant during that time period to disprove the reasonableness of

Riccardi's belief, that proves only that she did not work solely on Kessler's grants, not that she did not expect to be on all of his grants. Because the same questions of fact that precluded summary judgment remained unresolved at the close of the evidence, and because "doubt exist[ed] as to the conclusions to be drawn from [the] evidence," Johnson, 205 S.W.3d at 370, the jury, not the district court, should have determined whether Riccardi's claim had merit.

Kessler tries to save this part of the judgment by claiming that the lingering questions about pretext do not matter, because Riccardi failed to show an "adverse action" and therefore never established a prima facie case of retaliation. The evidence showed that the grant was never funded, Kessler argues, so failing to include Riccardi on the grant was not an adverse action, as it did not hinder her in the end from meeting her funding requirements. The district court apparently agreed, noting when granting the Rule 50 motion that any "damage" Riccardi incurred was "ethereal and speculative." App. 1232.

But Kessler–and the district court-overlooked a crucial factual issue. The grant might not have received funding, but Riccardi testified that even working on an unfunded grant proposal would have advanced her career. From that, a jury reasonably could have found that being excluded from career-building, albeit unfunded, grant work "well might have dissuaded a reasonable worker from making or

supporting a charge of discrimination," Allen, 240 S.W.3d at 820 (quoting Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006), and therefore constituted an adverse action. Kessler's rationale-that his actions did not really harm Riccardi because she never would have received funding from the grant anyway--contains another flaw. It is after-the-fact reasoning that contains its own dose of speculation about whether the action was adverse to Riccardi at the time it occurred. See Burlington Northern, 548 U.S. at 72-73 ("an indefinite suspension without pay could well" be an adverse action "even if the suspended employee eventually received backpay").

B.

The district court erred along similar lines in granting Kessler's Rule 50 motion with respect to the "Risperidone Contract." ill December 2006, Kessler signed the contract, which provided funding to conduct PET scans of individuals with schizophrenia. Kessler did not seek Riccardi's--or anyone else's--assistance in preparing the funding application, claiming that "it was far simpler just to write it" himself. R.89-2 at 13. The district court denied summary judgment, noting that the project was similar to other work he and Riccardi had worked on together and that, although Kessler prepared the application on his own, another colleague, Dr. Robert Shelton, was listed as a co-investigator, which "[gave] rise to an inference that

Kessler's stated reason for not including" Riccardi–"that it was just too much trouble"-was pretextual. R.133, 34. At trial, Kessler testified that no one other than himself was listed on the Risperidone Contract, purportedly to provide a legitimate non-retaliatory reason for excluding Riccardi. When Riccardi's counsel confronted him with the fact that Shelton was listed as a co-investigator with a salary on the "proposal transmittal fonn," R.242 at 1 ~9, Kessler claimed that another Vanderbilt employee-not he-put Shelton's name on the application. Even though Riccardi's name was not on the proposal, Kessler continued, she would not have been excluded from working on the Risperidone Contract once work began on it, but work had been delayed by the company funding the project.

Kessler's testimony that nothing would have prevented Riccardi from working on the contract once work began does not dispel the inferences of pretext identified by the district court at summary judgment. Riccardi claims that Kessler retaliated against her by leaving her name off the proposal, and a number of facts related to this complaint came out at trial that the jury should have had the opportunity to weigh, namely: (1) that Riccardi was included on all of his PET-related projects between September 2003 and June 2005; (2) that he did not ask her to work on either of his PET projects afterward; (3) that the Risperidone contract was related to their other work; and (4) that someone else's name was placed on the proposal, suggesting

that he readily could have done what he previously always had done: include Riccardi's name.

Kessler opposes this conclusion on two fronts, claiming that a jury could not have concluded that Kessler's conduct was an "adverse action" and that Riccardi offered nothing to support her claim of pretext. Leaving Riccardi's name off the project was not an adverse action, Kessler insists, because work on the project was delayed. But as with the Methamphetamine Grant, this reality does not undermine Riccardi's prima facie case. There was evidence after all that having one's name on projects is a career benefit. As to pretext, Kessler insists that Riccardi cannot rebut a purported non-retaliatory reason for his action-that he did not exclude Riccardi from work because no one had started working on the project. But any project delays do nothing to eliminate the harm of being left off the grant. The district court erred when it did not allow the jury to decide these lingering questions.

(Kessler, we should note, appears to dispute the premise of our reasoning, claiming that "Riccardi does not complain that her name was not included on the Risperidone Contract ... only ... that she did not do any work on that Contract," Kessler Br. 40. We are not sure where Kessler gets this idea, as the cited transcript pages do not mention the Risperidone Contract and our review of the trial transcript reveals nothing to that effect. But even if Riccardi at some point suggested that she was only

complaining about not getting to work on a yet-to-begin project, there is certainly contrary testimony indicating that Kessler's decision not to include her name on the contract formed the basis of her complaint and her papers before both the district court and this court confirm as much, see R.95, 38-39, Ricc. Br. at 61, Ricc. Reply at 19 ("[Kessler's] retaliatory conduct was in excluding me from the Risperidone contract proposal").)

Two final points. One, the reader may wonder why the parties-and the district court-treated the various adverse actions in this case as distinct claims as opposed to one claim with aggregated harms. We had the same question. The answer is that this is how the parties presented the case. And because the parties chose to structure the case in this manner and because no party has complained about this aspect of the case on appeal, we need not decide whether their assumptions about the appropriate structuring of this case are correct.

Two, we have asked Robert Rack, the head of the Office of Circuit Mediators, to contact the parties to determine whether they may wish to mediate the two claims left in this case. The mandate as a result will not issue until the parties successfully mediate the case or determine that they no longer wish to to resolve their differences through court-sponsored mediation.

VI.

For these reasons, we affirm the judgment, except with respect to the district court's grant of judgment as a matter of law on the two retaliation claims tried before a jury, which we reverse and remand.

APPENDIX B – MOTION OF APPELLANT TO AMEND APPELLANT'S BRIEF AND ORDER DENYING MOTION TO AMEND APPELLANT'S BRIEF, ISSUED JULY 29, 2008

UNITED STATES COURTS OF APPEALS
FOR THE SIXTH CIRCUIT

PATRIZIA RICCARDI, Appellant-Defendant	)	
v.	)	No: 08-5234
ROBERT KESSLER, Appellee-Plaintiff	)	

MOTION OF APPELLANT TO AMEND APPELLANT'S BRIEF

Dr. Patrizia Riccardi ("Appellant") moves to the Court to amend Appellant's brief based on discovered information that Judge Wiseman and Judge Brown had conflicts of interest precluding them from acting as impartial Judges in this matter because of their ties to Vanderbilt University, a defendant in the case and an employer of Appelle. Therefore, Appellant was denied a fair trial and moves to amend the brief to assert this additional basis for granting Appellant a new trial.

1. On July 10th and July 11th 2008, Appellee sent a certified letter to Appellant which was received on July 17th requesting an extension of time to file his

brief and requesting the Appendix Appellant. 2. Appellant filed her notice of appeal on February 25, 2008.

3. Appellant's brief was due on May 5, 2008. Appellant sought an extension of time and was granted one extension of time to file her brief on June 5th, 2008.Contrary to Appellee's misrepresentation, Appellant only requested one extension and timely served her brief on June 5th 2008.

4. Appellant filed a motion for leave to file of 86 pages of brief on June 5th 2008. The Court granted the motion on June 24th 2008.

5. Appellee's brief was due on July 8th, 2008. Appellee also misrepresents the date that their brief was due. I have no objection to their request but I only want to bring Appellee's lack of candor to the attention of the Court.

6. Appellant moves to the Court to file an amended brief and will send the amended version with the Appendix to Appellee as well.

Respectfully submitted,
Patrizia Riccardi, MD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via U.S certified mail to

Appendix B

Kevin Sharp,
DRESCHER AND SHARP, P.C.
1720 WEST END AVENUE, SUITE 300
NASHVILLE, TENNESSE 37212

Case No. 08-5234

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

ROBERT KESSLER,
Plaintiff -Appellee

v.

PATRIZIA RICCARDI,
Defendant -Appellant

Upon consideration of the appellant's motion to amend brief,
It is **ORDERED** that the motion be and it hereby is **DENIED**. The court of appeals is a court of review and it will not consider information not previously presented to and considered by the district court.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk

Issued: July 29, 2008

APPENDIX C – ORDER, MEMORANDUM OPINION, ISSUED BY THOMAS A. WISEMAN, JR., U.S.D.J., DATED 08/08/2007

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DR. PATRIZIA RICCARDI Plaintiff,	)	
v.	)	Civil Action No. 3:06cv0605
VANDERBILT UNIVERSITY MEDICAL CENTER, and DR. ROBERT KESSLER, and DR. MARTIN SANDLER, individually, Defendants.	)	

ORDER

Before the Court are two motions: (1) the Motion for Summary Judgment filed by Defendants Vanderbilt University Medical Center ("Vanderbilt") and Dr. Martin Sandler ("Sandler") (Doc. No. 66), seeking judgment in their favor on all claims brought against them by Plaintiff Dr. Patrizia Riccardi, including claims against Vanderbilt for sexual harassment by a supervisor and retaliation in violation of Title VII and § 4-21-301 of the Tennessee Human Rights Act, Tenn. Code Ann. ("THRA"), and against Sandler individually for retaliation in

violation of the THRA; and (2) the Motion for Partial Summary Judgment (Doc. No. 75) by Defendant Dr. Robert Kessler ("Kessler"), seeking summary judgment as to the THRA retaliation claim asserted against him individually.

For the reasons set forth in the accompanying Memorandum Opinion, the Court finds that Vanderbilt's and Sandler's motion should be granted in part and denied in part. Specifically, the motion for summary judgment as to the sexual harassment and retaliation claims against Vanderbilt is hereby **DENIED** on the grounds of disputed issues of material fact, but the motion for summary judgment as to the THRA retaliation claim against Sandler is **GRANTED** and that claim **DISMISSED**. Defendant Kessler's motion for partial summary judgment is **DENIED**.

It is so **ORDERED**.

Thomas A. Wiseman, Jr.
Senior U.S. District Judge

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DR. PATRIZIA RICCARDI Plaintiff,	)	
v.	)	Civil Action No. 3:06cv0605
VANDERBILT UNIVERSITY *MEDICAL CENTER*, and DR. ROBERT KESSLER, and DR. MARTIN SANDLER, individually, Defendants.	)	

MEMORANDUM OPINION

Before the Court are two motions: (1) the Motion for Summary Judgment filed by Defendants Vanderbilt University Medical Center ("Vanderbilt") and Dr. Martin Sandler ("Sandler") (Doc. No. 66), seeking judgment in their favor on all claims brought against them by Plaintiff Dr. Patrizia Riccardi, including claims against Vanderbilt for sexual harassment by a supervisor and retaliation in violation of Title VII and § 4-21-301 of the Tennessee Human Rights Act, Tenn. Code Ann. ("THRA"), and against Sandler individually for retaliation in violation of the THRA; and (2) the Motion for Partial Summary Judgment (Doc. No. 75) by Defendant Dr. Robert Kessler ("Kessler"), seeking summary

judgment as to the THRA retaliation claim asserted against him individually.[1] This Court's jurisdiction is premised upon the federal questions presented as well as the complete diversity among the parties.

The motions have been fully briefed and are ripe for consideration. For the reasons set forth below, the Court finds that Vanderbilt's and Sandler's motion should be granted in part and denied in part. Specifically, the motion for summary judgment as to the sexual harassment and retaliation claims against Vanderbilt will be denied, but the motion for summary judgment as to the THRA retaliation claim against Sandler will be granted and that claim dismissed. Kessler's motion for partial summary judgment will be denied.

I. STANDARD OF REVIEW

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "A fact is 'material' and precludes grant of summary judgment if proof of that fact would have [the] effect

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1 Plaintiff also asserts state law claims against Kessler individually for "personal injury/battery" and intentional infliction of emotional distress. Those claims are not addressed in Kessler's motion.

of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect [the] application of appropriate principle[s] of law to the rights and obligations of the parties." *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984) (quoting Black's Law Dictionary 881 (6th Ed.1979)); other citations omitted). The Court must view the evidence in a light most favorable to the nonmovant and draw all reasonable inferences in the nonmovant's favor. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Bender v. Southland Corp.*, 749 F.2d 1205, 1210 11 (6th Cir. 1984).

The movant bears the burden of demonstrating the absence of all genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The initial burden on the movant is not as formidable as some decisions have indicated. The moving party need not produce evidence showing the absence of a genuine issue of material fact; rather, "the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Once the moving party discharges that burden, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Fed. R. Civ. P. 56(e); *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986).

To create a genuine issue of material fact, however, the nonmovant must do more than present

some evidence on a disputed issue. As the United States Supreme Court has stated, "[t]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the [nonmovant's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986) (citations omitted). The standard for summary judgment mirrors the standard for a directed verdict under Rule 50(a). *Anderson*, 477 U.S. at 250. Consequently, a nonmovant must do more than raise some doubt as to the existence of a fact; the nonmovant must produce evidence that would be sufficient to require submission to the jury of the dispute over the fact.

II. FACTUAL BACKGROUND

A. The Parties

Vanderbilt is a private, not-for-profit corporation organized under Tennessee law. It is divided into various schools and colleges including the School of Medicine. The School of Medicine is further divided into various departments, including the Department of Radiology and Radiological Sciences ("Radiology Department"). Within departments there are also divisions of more specialized concentrations. Physicians employed by Vanderbilt are frequently appointed to both faculty and to clinical positions in which they see patients. Some faculty members concentrate on research and

others divide their time between research and clinical care. At all times relevant to Plaintiff's claims, the Dean of the School of Medicine was Steven Gabbe, M.D.

The Radiology Department includes both physicians and basic scientists who hold non-medical degrees in fields such as physics. A significant number of the physicians in the Radiology Department are engaged in various research activities that are funded through grants awarded by by the National Institutes of Health ("NIH") and other organizations. Members of the Radiology Department faculty are expected to obtain funding from research grants to support a significant portion of their salary. Generally, all non-tenured research faculty are expected to obtain support for at least 75% of their salary from outside funding sources within three years of being appointed to the faculty.

Defendant Dr. Martin Sandler has been employed by Vanderbilt as a member of the faculty of the School of Medicine since 1983. At all times relevant to this dispute, he was Chairman of the Radiology Department and Defendant Dr. Robert Kessler's direct supervisor. Sandler was promoted to the position of Associate Vice Chancellor for Hospital Affairs in July 2006.

Defendant Kessler was initially appointed to the faculty of the School of Medicine in the Radiology Department in 1984 as Associate Professor with tenure. He was promoted to the position of full

professor within several years, and in August 2004 was named to the Roentgen Chair of the Radiology and Radiological Sciences. He is a renowned scholar with a lengthy list of publications; he was responsible for the design and start-up of Vanderbilt's Positron Emission Tomography ("PET") Center and is the Director of Vanderbilt's Center for Molecular Imaging. In 2003, Kessler was awarded a substantial, multiyear research grant by the NIH to conduct research into certain brain functions affecting schizophrenia, drug abuse, attention deficit disorder, depression and other mental disorders utilizing a radioactive "marker" known as [18F]fallypride and PET technology (the "AMPT Grant").

Plaintiff Dr. Patrizia Riccardi is a medical doctor in the field of psychiatry who is currently employed by Vanderbilt as a Research Assistant Professor in the Center for Molecular Imaging within the Radiology Department. Plaintiff is an Italian citizen who received her medical education and training primarily in Italy. She moved to the United States in 1995 and, prior to coming to Vanderbilt, had accepted a fellowship at Yale University Medical School.

Plaintiff's affiliation with Vanderbilt began when she applied for and accepted an appointment as a Research Fellow in the Radiology Department at Vanderbilt beginning in September 2003. Abandoning her fellowship at Yale, Plaintiff accepted the fellowship at Vanderbilt in a part-time

(50% effort) position at a salary of $58,000 per year, as Plaintiff planned to continue to spend most of her time in New York and Connecticut, where she conducted a clinical practice, and only the last ten days of each month in Nashville. Plaintiff asserts that the major reason she came to Vanderbilt was that she believed she could obtain valuable experience training with Kessler, who was one of the few scientists in the United States who specializes in the field she wished to pursue, PET. Plaintiff asserts she was recruited specifically to work with Kessler on his AMPT Grant and other work involving PET technology. There is no dispute that Plaintiff and Kessler worked closely together from September 2003 through June 2005, during which time Kessler functioned as Plaintiff's mentor and advisor as well as her direct supervisor.

Plaintiff completed her fellowship at Vanderbilt in the spring or summer of 2004 and accepted a one-year term position as Research Assistant Professor in the Radiology Department, without tenure, effective July 1, 2004 through June 30, 2005. Her appointment was for a 50% effort, referred to as "fulltime, partial-load status," which made her eligible for full faculty benefits, and her initial salary in that position was $65,000. From the outset, however, the terms of Plaintiff's employment required that she become 75% funded within a three-year period of her faculty appointment, or by July 1, 2007, in order to ensure renewal of her contract. Plaintiff has known since her initial employment that her faculty appointment would likely not

continue to be renewed after that date unless she was able to fund 75% of her own salary through outside sources by then. One potential source of outside funding was to obtain her own grants to pay a portion of her salary, or to contribute to other faculty members' grants, which would also pay a portion of her salary.

After completion of her fellowship and beginning work as assistant professor, Plaintiffcontinued to work in Nashville only ten days per month. She was reappointed to the same position, under the same terms, for two subsequent one-year periods, from July 1, 2005 through June 30, 2006 and from July 1, 2006 through June 30, 2007. She was recently reappointed on the same terms for the period from July 1, 2007 through December 31, 2007, even though Plaintiff has not succeeded in obtaining 75% funding of her salary.[2]

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2 Plaintiff only submitted one grant herself prior to June 2005, which was not funded, and none of the grant proposals she has submitted since June 2005 have been funded either. Nonetheless, Plaintiff received a letter dated May 3, 2007 from Steven G. Gabbe, M.D., Dean of the Medical School, notifying her that he had approved an extension of her current appointment based upon the recommendation of Dr. Jeremy Kaye, who succeeded Sandler as Chair of the Radiology Department in July 2006. (Doc. No. 732, at 1; Doc. No. 69, at ¶2.) Plaintiff had previously received a letter from Dr. Kaye dated February 26, 2007 reminding her that reappointment to the Radiology faculty for fiscal-year 2007 was contingent on her obtaining 75% funding of her salary from outside sources, including grants, which she had not done. Dr. Kaye nonetheless recommended extending her appointment an

B. Plaintiff's Relationship with Kessler

Plaintiff's primary job duties at Vanderbilt from 2003 through June 2005 involved working with Kessler on the AMPT Grant. Plaintiff also asserts she was expected to work exclusively with Kessler on his grants and was recruited by Kessler for this purpose, and that Kessler was expected to contribute to her grant work as well, both because he was her mentor and supervisor and because he was the only scientist at Vanderbilt specializing in PET who could assist with her grant work.

She alleges that Kessler began sexually harassing her and subjecting her to a severe and pervasive hostile working environment in November 2003. The parties do not dispute, for purposes of the Defendants' motions, that there is a material question of fact as to whether Kessler sexually harassed the Plaintiff and as to whether the alleged harassment was sufficiently severe and pervasive to support a *prima facie* case under Title VII or the THRA, as discussed below. Plaintiff claims she did not initially report her alleged problems with Kessler because he is a renowned expert in the field

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additional six months based upon the fact that she had a grant application pending at that time, her work on the AMPT grant had been extended until July 31, 2007, and she had two manuscripts in preparation for publication. (Doc. No. 9315.) The extension was ostensibly intended to give her time to complete work on pending projects, to continue seeking grant funding and, alternatively, to seek employment elsewhere. (*Id.*)

of neuroimaging while she was just beginning her career in that field, and she was aware that he had the "power and influence to destroy her career at Vanderbilt or anywhere else." (Doc. No. 93, Affidavit of Dr. Patrizia Riccardi ("Riccardi Aff.") ¶ 20.) According to Plaintiff, her work schedule was adversely affected by Kessler's harassing behavior in that she had to work longer hours to complete her work because Kessler would distract her, and she eventually changed her schedule to work later hours in an effort to avoid him.

Kessler, on the other hand, denies engaging in any sexually harassing behavior and instead contends that he and Plaintiff conducted a consensual sexual relationship that began in January or February 2004. (Plaintiff denies ever having sexual relations with Kessler.)

In November 2004, Kessler called Defendant Sandler, then Chair of the Radiology Department, late one evening to report that he had been having an affair with Plaintiff for approximately a year and that they had had a bad break-up. He met with Sandler the next morning and relayed to him more details about the alleged affair, and reported that it had ended badly after he had told Plaintiff that he would not divorce his wife and that he and Plaintiff needed to end their relationship. According to Kessler, Plaintiff became very upset about this and physically attacked him. Kessler showed Sandler what he alleged to be bruises and large bite mark on his forearm inflicted by Plaintiff. Kessler also

assured Sandler that the affair was over, that it would not happen again, and that he felt that he and Plaintiff could disengage their relationship and continue to collaborate effectively as colleagues. Finally, Kessler relayed to Sandler that Plaintiff did not want Sandler to discuss the issue with her since she was embarrassed about it and felt it would make it difficult for her to continue to work in the Radiology Department.

Sandler has testified that, based on his long-standing relationship with Kessler, he had no reason not to believe Kessler. Based on Kessler's representations that the relationship was over, Sandler decided not to take the matter to the Dean or to confront Plaintiff about it. He told Kessler, however, that he would watch the two of them closely and, if the relationship resumed, he would have no choice but inform the Dean about the affair.

Sandler also testified that, while the Vanderbilt Faculty Manual addresses the impropriety of sexual relationships between faculty members and students, it does not expressly address the issue of consensual relationships between faculty members or between faculty members and fellows, who are neither faculty nor students. Moreover, although Plaintiff had been a fellow when the relationship commenced, Plaintiff was a atypical in that she was in her late 40s at the time, a board-certified Psychiatrist and had been a practicing physician for approximately twenty years before

coming to Vanderbilt. Thus, Sandler maintains that nothing in the Faculty Manual required that he advise anyone outside the Radiology Department of the relationship between Kessler and Plaintiff, as reported to him by Kessler, despite the fact that both Sandler and the Vanderbilt community generally regarded a consensual relationship between a senior faculty member and a fellow or junior faculty member as inappropriate. In any event, as a result of Sandler's decision, Plaintiff did not become aware that Kessler had (falsely, according to her) reported the existence of a sexual relationship to Sandler until sometime during the course of this lawsuit.

Plaintiff met with Sandler in early December 2004, shortly after Kessler reported the alleged relationship and bad break-up to him. The initial purpose of the meeting was to discuss a dispute Plaintiff had had with Kessler regarding the submission of a grant proposal. That issue was resolved prior to the meeting, so instead Plaintiff asked Sandler for more departmental assistance with her own grant proposals. Plaintiff did not bring up any problems concerning the alleged sexual harassment by Kessler, nor did Sandler bring up the issue of the alleged consensual sexual relationship and physical assault.

According to Sandler, he saw Plaintiff and Kessler together two or three times between November 2004 and June 2005 and "they seemed to be doing fine together." (Doc. No. 72, Affidavit of Martin P. Sandler ("Sandler Aff.") ¶ 14.)

In May 2005, Kessler reported to Sandler another alleged incident that occurred between him and Plaintiff. This time, according to Kessler, Plaintiff accompanied him to an optician's office to look at some new eyeglass frames. He alleged that she became angry, and physically violent, because Kessler selected the frames his wife preferred rather than those that Plaintiff preferred. Plaintiff denies this incident ever occurred.

C. The Toronto Incident

In June 2005, both Plaintiff and Kessler (as well as Sandler and other Vanderbilt faculty from the Radiology Department) attended a professional conference in Toronto, Ontario. Although Plaintiff and Kessler traveled to Toronto together, Plaintiff ensured that they stayed at different hotels. Kessler nonetheless helped her rehearse for her two presentations to be given at the conference. After the presentations were given successfully, Plaintiff and Kessler went out to a celebratory dinner at the restaurant at the Four Seasons Hotel where Kessler was staying.

Prior to the dinner, Kessler persuaded Plaintiff to leave her valuables in his hotel room, as her hotel room did not have a safe. After dinner, Plaintiff went to Kessler's room to retrieve her belongings. Plaintiff alleges that once they were in the room, Kessler attacked her physically and

attempted to rape her. Plaintiff successfully defended herself but threatened to call the police and report the assault. She claims Kessler threatened to ruin her career if she reported him. Kessler denies that he attacked Plaintiff and instead claims that they had consensual sexual relations, at her invitation; he alleges that after intercourse, he expressed remorse and told Plaintiff that they could not start seeing each other again, at which point Plaintiff became violent and also threatened to ruin Kessler's career.

The undisputed facts are that Plaintiff called Kessler's wife that night after the altercation, although the content of that phone conversation is not in the record, and Kessler drove Plaintiff back to her hotel. Later, Kessler called the Toronto police and reported that Plaintiff had assaulted him. As a result, the Toronto police went to Plaintiff's hotel room and arrested her. She reported that she was the victim rather than the perpetrator of the assault, so the Toronto police arrested Kessler as well. Both parties were held in jail for a day and a night, and then released when the authorities decided there was not enough evidence to determine which party was the aggressor and which the victim, so the charges against them were dropped.

D. Plaintiff's Allegations of Harassment and the ODC Investigation

Before she even left Toronto, Plaintiff called Anita Jenious, Associate Director of the Vanderbilt Opportunity Development Center ("ODC"), to report Kessler's alleged sexual harassment as well as the alleged assault. Shortly after returning to Nashville, on June 24, 2005, Plaintiff had a meeting with Jenious in person to lodge a formal complaint against Kessler. Plaintiff sent Jenious a follow-up e-mail the next day asking whether there was anything else she needed to do to prevent Kessler from continuing to harm her. Jenious began her investigation into Plaintiff's claims immediately after the June 24 meeting and concluded the investigation in December 2005.

Ultimately, on the basis of the information obtained during the course of her investigation, Jenious decided that there was insufficient evidence to support Plaintiff's claims of sexual harassment and assault, but found based upon Kessler's admission that Plaintiff and Kessler had conducted a consensual sexual relationship. Because Kessler was Plaintiff's supervisor and mentor at the time, Kessler's behavior was determined to be unprofessional, inappropriate, and in violation of the standards of conduct set forth in the Vanderbilt Faculty Manual. Based upon Jenious's findings and the recommendations of a specially appointed faculty committee, Vanderbilt disciplined Kessler in the form of a reprimand, encouragement to continue receiving counseling, and a requirement that he reimburse Vanderbilt for certain out-of-pocket expenses, including attorneys' fees, arising out of or

in connection with his unacceptable conduct with Plaintiff that led to the litigation being filed against the University, up to a maximum of $325,000. He was also advised that any future misconduct including inappropriate relationships with employees or trainees under his supervision would constitute grounds for dismissal. Finally, Kessler was instructed to have no direct communication with Plaintiff, to avoid being alone with her in the workplace, and to avoid saying anything that could be considered retaliation against Plaintiff in the advancement of her career at Vanderbilt or elsewhere.

E. Plaintiff's Allegations of Retaliation

Plaintiff maintains that the ODC investigation was biased. Specifically, she alleges that (1) Jenious contacted all of Kessler's witnesses (four) and only one of Plaintiff's even though Plaintiff provided Jenious with a thirty-six page narrative account of her working relationship with Kessler and the alleged harassment, in which she identified eight different witnesses; (2) Jenious never gave her the opportunity to rebut Kessler's or his witnesses' allegations; and (3) Jenious lied to justify her conclusions when she stated to the special investigation Committee that Plaintiff had only ever identified one witness, and when she stated that Plaintiff essentially stopped communicating and cooperating with her early in the investigation process.

Plaintiff also alleges that Sandler impeded the ODC investigation and exerted his influence to ensure that Kessler was favored in the investigation. In support of this allegation, Plaintiff points to Anita Jenious's deposition testimony in which she was asked to explain some handwritten notes she took when she interviewed Sandler on June 28, 2005. According to those notes, Sandler told her that he needed Kessler to work. Asked to elaborate, Jenious stated:

> I had asked about the possibility of separating them, of removing either Dr. Kessler or Dr. Riccardi from being in close physical proximity as far as work, et cetera. If need be, having Kessler removed from the work situation, et cetera. And Dr. Sandler explained to me the work that Dr. Kessler was doing – that he was a productive senior faculty member. That through his grants and work, he brought in a lot of revenue to the department. He needed him to work.

(Jenious Dep. at 202:10 – 203:4.) Plaintiff further asserts that Jenious "admitted that the fact that Dr. Kessler stood to lose his job affected the outcome of her investigation" (Doc. No. 107, at 17), but the deposition testimony to which she cites does not support the inference she is attempting to establish here. Jenious did state that "the fact that Dr. Kessler stood to lose a lot influence[d] her in believing that what he was saying was true."

(Jenious Dep. at 126:7–10.) The context of the statement, however, as well as Jenious's testimony elsewhere, make it clear that she meant that the fact that Kessler admitted he had an inappropriate sexual relationship with a subordinate, given that he was married and stood to lose so much in making that admission, influenced her to believe he was likely telling the truth.

On June 29, 2005, just a few days after Plaintiff first met with Jenious to make a formal complaint of sexual harassment, Plaintiff and her attorney, David Raybin, met with several Vanderbilt representatives to discuss her allegations. Prior to the meeting, Raybin had advised Vanderbilt that Plaintiff did not want to be in Kessler's presence, so Kessler did not attend the meeting and as a result was not immediately aware of the decisions reached during the meeting. While there are almost as many versions of what transpired at the meeting as there are persons who attended it, it is clear that Vanderbilt was trying to figure out a way for Plaintiff and Kessler both to continue working at Vanderbilt without having to come into contact with each other, at least until the ODC investigation was concluded. Sandler announced his decision at that meeting that work on the AMPT Grant would be temporarily suspended for both Plaintiff and Kessler. Later, it turned out that work on the Grant had to be suspended because of the temporary unavailability of [18F]fallypride, the radioactive marker used in conducting the PET scans. Plaintiff does not dispute that neither she nor Kessler

performed any work on the AMPT Grant after June 29, 2005 until January or February 2006, when [18F]fallypride became available again. She likewise does not dispute that Kessler had no input in the decision to suspend work on the Grant.

Plaintiff alleges that she was told at the meeting that she could not work with Kessler while the ODC investigation was pending and that Vanderbilt did not want her to come into contact with Kessler at all. She was therefore allegedly told to stay away from her office and the PET lab until the investigation was complete, although there was no discussion about prohibiting Kessler from using his office or the PET lab. Vanderbilt denies that Plaintiff was ever told that she should stay away from her office and contends that the evidence in the record to which Plaintiff points in support of that allegation is either inadmissible hearsay or does not actually support the claim. In any event, there is no dispute that Plaintiff and Kessler inadvertently ran into each other in the PET lab shortly after the June 29 meeting, and that Plaintiff thereafter fled the campus The next day, she left town on a previously scheduled trip. Plaintiff returned to Vanderbilt around August 20 and does not allege that she was still denied access to her office at that point or any time thereafter.

Shortly before Plaintiff returned to Nashville on August 20, 2005, her attorney sent a letter to one of Vanderbilt's attorneys informing him that Plaintiff intended to return to Vanderbilt "in

approximately ten days to continue her work" and that, although she understood that work on the AMPT Grant was suspended, "she ha[d] other matters she [could] work on and [would] use this interval to plan these projects with others." (Doc. No. 74-16, Deposition of David Raybin ("Raybin Dep.") at 31–32 & Ex. 1.) Plaintiff nonetheless claims that because 90% of her work before June 2005 was with Kessler on the AMPT Grant, she was basically unable to work even after she returned to Vanderbilt in late August.

In October 2005, Plaintiff sent an e-mail message to Sandler asking for some assistance with a grant proposal she was preparing to submit to the NIH. The proposal was a resubmission of a "Sex Differences" grant proposal Plaintiff had previously submitted in January or February 2005, with Kessler named as co-investigator, but which had not been funded. On October 24, 2005, Sandler and Dr. James Patton, Professor and Vice Chair for Finance and Administration, Radiology Department, both met separately with Kessler and Plaintiff to discuss Plaintiff's need for assistance and how the two of them could resume collaboration on various grant proposals and other work without the need for direct contact. Sandler proposed that Plaintiff and Kessler could communicate with each other via e-mail using Patton as an intermediary, which Plaintiff found acceptable. (Later, the parties decided to e-mail each other directly through new e-mail accounts, with copies to both their attorneys.)

In her meeting with Sandler and Patton, Plaintiff also communicated her desire to resubmit her Gender Differences grant proposal on November 1, 2005 and asked for permission to list Kessler as coinvestigator on that grant, as he was on the first submission of the same proposal. Plaintiff told Sandler and Patton that she needed Kessler's assistance in reviewing the grant application before resubmitting it and in particular needed his help writing the rebuttal letter addressing the specific concerns outlined by the reviewers of the original grant submission. Plaintiff asserts that Kessler's assistance with the resubmission of the grant proposal was critical because she had been informed by the NIH that without the support of Kessler or someone of his expertise, her chances of having the grant funded were not good. In addition, she had never resubmitted a grant before and needed guidance on how to address the reviewers' concerns with the original proposal. Finally, Plaintiff requested assistance with statistical analysis to support the proposal. Sandler and Patton agreed to speak to Kessler and also to contact someone in the Biostatistics Department on Plaintiff's behalf regarding help with the statistical analysis.

That same day, after being contacted by Sandler and/or Patton, Kessler agreed to be listed as co-investigator on the grant resubmission, but he did not agree to assist with the grant resubmission because he was scheduled to leave town the next day. He did, however, recommend someone in the Biostatistics Department who would be familiar with

the type of analysis Plaintiff needed and might be able to help her. Patton and Sandler both contacted the Biostatistics Department that day. Patton testified that he made arrangements with someone on the Biostatistics faculty to provide Plaintiff some assistance but asserts that he never heard back from Plaintiff. Plaintiff claims she was told by the Biostatistics Department that no one was available to assist her given the short notice and the November 1, 2005 deadline. Plaintiff therefore resubmitted her grant proposal naming Kessler as co-investigator but without his input and without any assistance with the statistical analysis. She alleges that Patton and Sandler knew she needed help and that Kessler would not provide the requested assistance, but did not offer her assistance from anyone else at Vanderbilt.

Plaintiff resubmitted the Sex-Differences Grant proposal again, this time to the NIH, in October 2006. Kessler again agreed to serve as co-investigator on the grant. Plaintiff alleges, however, that "his comments were not meaningful and were provided at the last minute so that it was impossible for Plaintiff to incorporate any of his suggestions into the proposal." (Doc. No. 107, at 34.)

In February 2006, Plaintiff submitted a grant to the NIH titled "Imaging of Dopamine Release in Borderline Personality Disorder" (the "BPD Grant proposal"). She claims that Kessler refused to assist her with this grant in any way, despite having agreed in March 2005 to serve as co-investigator on

the grant proposal. She alleges that Kessler was listed on the original application and he reviewed it in April 2005 and provided comments and suggestions at that time, and even offered to allocate money from his other grants to fund two or three scans so that she would have pilot data to support the BPD Grant proposal. (Riccardi Aff. ¶¶ 67, 68, and Ex. 5.) Plaintiff decided for strategic reasons to wait to submit the grant proposal, and planned to submit it in February 2006 instead.

In a letter dated January 24, 2006, Kessler's attorney informed both Vanderbilt's and Plaintiff's representatives that Kessler was not willing to serve as co-investigator on the BPD Grant and that he was under no obligation to do so. Plaintiff asserts that Vanderbilt "acquiesced" to Kessler's refusal to assist her despite the fact that Kessler was the only faculty member at Vanderbilt with the relevant background in PET neuroimaging who could assist her and serve as co-investigator on the grant. Plaintiff alleges she submitted the BPD grant proposal without Kessler's assistance.

Kessler did agree to serve as co-investigator on a grant proposal concerning autism that Plaintiff submitted to the NIH in June 2006. While he also agreed to review the grant and provide comments prior to its submission, Plaintiff complains that his comments were not comprehensive or meaningful.

Plaintiff submitted a proposal for a Vanderbilt Discovery Grant, also on autism, in August 2006.

Kessler agreed to assist her with that grant proposal and specifically expressed an interest in "help[ing] in the composition and editing of this application so that, as much as possible, the grant application is clear and compelling." (Doc. No. 82-2, at 2.) By the time he agreed to assist her, however, Plaintiff had already submitted the grant proposal. She alleges that his refusal to promptly agree to help was retaliatory.

Kessler refused to be a Mentor/Sponsor on a NARSAD Young Investigators grant proposal Plaintiff submitted in July 2007. Plaintiff claims Vanderbilt was aware of Kessler's refusal and made an offer to attempt to locate another mentor for the grant but, Plaintiff claims, the offer was disingenuous because there is no one at Vanderbilt other than Kessler who has expertise in the type of research Plaintiff wishes to pursue. From the record, it appears that Plaintiff submitted the grant proposal without Kessler's participation but with a different Vanderbilt faculty member named as her Mentor/Sponsor.

The record does not reflect whether the NARSAD grant proposal was accepted for funding, but it is undisputed that none of Plaintiff's other grant proposals to date has been accepted for funding.

Plaintiff also complains that since June 2005 Kessler has submitted three new grant proposals on which he did not include her as a co-investigator,

despite the fact that Plaintiff was allegedly included on all of Kessler's grant proposals involving PET technology submitted after she arrived at Vanderbilt and up until June 2005. She claims that Kessler's failure to include her as co-investigator on these grant proposals was retaliatory.

In general, Plaintiff alleges that because Kessler has failed to support her grants or to include her on his own grant work, she has not obtained sufficient outside funding to enable her to remain on the Vanderbilt faculty. She alleges that Kessler's actions were retaliatory and either constituted or resulted in an adverse employment action. She alleges that Vanderbilt and Sandler also retaliated against her for reporting sexual harassment by not sufficiently supporting her grant work and by acquiescing in Kessler's decisions.

III. ANALYSIS AND DISCUSSION

A. Plaintiff's Sexual Harassment Claim Against Vanderbilt

(1) Applicable Legal Standards

Plaintiff asserts sexual harassment/hostile work environment claims against Vanderbilt under Title VII and the Tennessee Human Rights Act ("THRA"). The standards for determining the viability of such claims as a matter of law are the same under both statutes, *Parker v. Warren County Util. Dist.*, 2 S.W.3d 170, 176 (Tenn. 1999) (adopting

the standards set forth in *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)).

An employee alleging a hostile work environment based on sexual harassment must show that:
(1) the employee was a member of a protected class; (2) the employee was subjected to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the charged sexual harassment created a hostile working environment; and (5) a basis exists for imposing liability on the employer. *Hafford v. Seidner*, 183 F.3d 506, 512 (6th Cir. 1999).

A hostile work environment occurs "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal quotation marks and citations omitted). Both an objective and subjective test must be met; in other words, the conduct must be so severe or pervasive as to constitute a hostile or abusive working environment both to a reasonable person and the actual victim. *Id.* at 21–22.

Analysis of the fifth element of the five-part showing, employer liability, differs depending upon the identity of the alleged harasser, with a distinction drawn between co-worker harassment

and harassment perpetrated by a supervisor. *Nievaard v. City of Ann Arbor*, 124 Fed. Appx. 948, 953 (6th Cir. March 7, 2005). If the harassment was perpetrated by a supervisor and resulted in a "tangible employment action," the employer will be strictly liable. *Ellerth*, 524 U.S. at 762–63; *Keeton v. Flying J, Inc.*, 429 F.3d 259, 262 (6th Cir. 2005). If, however, no tangible employment action is taken,

> a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. . . . The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Ellerth, 524 U.S. at 765; *Faragher*, 524 U.S. at 777–78 (employing identical language).

In the case at bar, Plaintiff asserts both that she suffered a tangible employment action and that material factual disputes preclude summary judgment for Vanderbilt on the grounds of the Ellerth/Faragher defense.

(2) Whether Plaintiff Was Subject to a "Tangible Employment Action"

According to the Supreme Court, a tangible employment action is "the means by which the supervisor brings the official power of the enterprise to bear on subordinates." *Ellerth*, 524 U.S. at 762. Thus, a tangible employment action "requires an official act of the enterprise, a company act." *Id.* The action must be *materially* adverse to warrant imposition of strict liability; thus, generally speaking, the action involves "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Keeton*, 429 F.3d at 262. In this case, the actions to which Plaintiff points do not support her claim that she suffered a materially adverse "tangible employment action."

First, she argues that Kessler falsely reported to Sandler that Kessler and Plaintiff had been conducting a consensual sexual affair and that Plaintiff had physically assaulted him, and that these allegations had the effect of impugning her and damaging her reputation. While it is certainly possible that Kessler's reports may have somewhat diminished Sandler's respect for Plaintiff, her allegations in that regard are purely speculative. Moreover, she has not shown that this hypothetical diminishment of her reputation resulted in a tangible or material employment action against her in the sense of an official act by Vanderbilt itself.[3]

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3 While damage to reputation that might harm future

Otherwise, Plaintiff argues only that the Defendants' allegedly retaliatory conduct, which by definition could only have begun after she reported sexual harassment, in itself constituted a tangible employment action. According to Plaintiff's own allegations, however, the allegedly adverse actions resulted not from the harassment itself but from Plaintiff's act of reporting the harassment. As a matter of law, allegations of retaliatory conduct are not sufficient to state a claim that the alleged sexual harassment itself resulted in an adverse employment action. *See Morris v. Oldham County Fiscal Court*, 201 F.3d 784, 790–91 (6th Cir. 2000) (holding that conduct alleged to have occurred in retaliation for complaints made about a hostile work environment cannot be figured into "the hostile working environment equation," because such incidents are not alleged to have occurred "because of sex").

Because Plaintiff has not presented evidence that she suffered a tangible employment action as a result of the alleged sexual harassment/hostile work environment, Vanderbilt is entitled to raise the *Ellerth/Faragher* affirmative defense.

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employment prospects may well constitute an adverse employment action sufficient to support a *prima facie* claim of *discrimination* under Title VII, *see Hillig v. Rumsfeld*, 381 F.3d 1028, 1038 (10th Cir. 2004), Plaintiff has not pointed to any case law suggesting that damage to reputation alone would warrant barring an employer from presenting an affirmative defense against a hostile work environment claim.

(3) Whether Vanderbilt is Entitled to Summary Judgment on the Basis of the Ellerth/Faragher Defense

Again, Vanderbilt does not contest for purposes of this motion for summary judgment that Plaintiff suffered severe and pervasive sexual harassment. It does contend, however, that it is entitled to summary judgment on the basis that the undisputed facts demonstrate that Vanderbilt exercised reasonable care to prevent and correct promptly any sexually harassing behavior *and* that Plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided by Vanderbilt or otherwise to avoid harm. *Cf. Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. At 807.

In support of its motion, Vanderbilt focuses on the institutional efforts it has undertaken to prevent and correct workplace discrimination and sexual harassment, and points out that Plaintiff was admittedly aware of the resources available to her and failed to take advantage of them until after the Toronto incident occurred. Plaintiff, for her part, does not attempt to justify her failure to report Kessler's alleged harassment until June 2005. Instead, she points out that Kessler reported to Sandler, his supervisor, in the fall of 2004 that Kessler and Plaintiff had been conducting a consensual sexual relationship and that Plaintiff had physically assaulted him when he ended it. While Plaintiff cannot refute Sandler's testimony that he

had known Kessler for many years at the time Kessler reported the relationship with Plaintiff to him and that he had no reason not to believe Kessler's version of events, she argues that as a result of Kessler's false report, Sandler and therefore Vanderbilt had reason to believe that Kessler had conducted an inappropriate sexual relationship with a subordinate, which gave rise to an affirmative obligation on Sandler's part to discuss the issue with Plaintiff. Plaintiff further argues that if Sandler had confronted her at that time, he would have learned that she denied the existence of a sexual relationship and in fact believed that Kessler had been harassing her. At that point, she argues, Kessler's behavior could have been promptly corrected, and additional harassment and likely the assault that occurred in June 2005 could have been prevented.

Although Plaintiff's contentions regarding what might have happened if Sandler had questioned her about her relationship with Kessler are largely speculative, the Court nonetheless finds that a jury question is presented regarding the reasonableness of Sandler's actions, or failure to act, in response to Kessler's report. The issue, as framed by the Supreme Court in both *Faragher* and *Ellerth*, is the employer's "reasonable care." *Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807. In this case, a jury might conceivably conclude that Sandler, as both Kessler's and Plaintiff's supervisor, had an obligation to ensure the welfare of Plaintiff, as the more subordinate employee, and that he was

unreasonable in failing either to convey Kessler's report to the Dean or to confront Plaintiff about it. For that reason, Vanderbilt's motion for summary judgment as to the hostile work environment/sexual harassment claim against it must be denied.

B. The Retaliation Claims Against Vanderbilt

(1) Applicable Legal Standards

Title VII provides that "[i]t shall be an unlawful employment practice for an employer to discriminate against any of [its] employees . . . because [the employee] has opposed any practice made unlawful by [42 U.S.C. § 2000e], or because he has made a . charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. §2000e-3(a). Similarly, under the THRA:

> It is a discriminatory practice for a person or for two (2) or more persons to: (1) Retaliate or discriminate in any manner against a person because such person has opposed a practice declared discriminatory by this chapter or because such person has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter. . . .

Tenn. Code Ann. § 4-21-301. A retaliation claim, like a disparate treatment case, can be proved either

through direct evidence or through indirect evidence, using the *McDonnell-Douglas* burden-shifting approach. *See Christopher v. Strouder Mem'l Hosp.*, 936 F.2d 870, 879 (6th Cir. 1991) (considering direct and indirect evidence in support of retaliation claim); *Booker v. Budget Rent-A-Car Sys.*, 17 F. Supp. 2d 735, 750 (M.D. Tenn. 1998) (same). Plaintiff here does not claim to have direct evidence of retaliation.

To prove a *prima facie* case of retaliation using indirect evidence, a plaintiff must show that (1) she engaged in activity protected under Title VII (or the THRA); (2) the defendant knew she exercised her protected civil rights; (3) the defendant took an employment action adverse to the plaintiff; and (4) there was a causal link between the protected activity and the adverse employment action. *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 929 (6th Cir. 1999). If the plaintiff succeeds in establishing a *prima facie* case, the burden shifts to the defendant to articulate a legitimate, non-retaliatory reason for the action taken. If the defendant meets that burden, the burden then shifts back to the plaintiff to demonstrate that the defendant's proffered reason is pretextual because it (1) had no basis in fact; (2) did not actually motivate the decision; or (3) was insufficient to motivate the decision. *Sherrills v. Beison*, No. 06-2351, 2007 WL 2171314, at *3 (6th Cir. July 27, 2007).

Vanderbilt asserts that it is entitled to

summary judgment on Plaintiff's retaliation claim because she cannot establish that she suffered an adverse employment action, that any alleged adverse action was causally related to her engaging in protected activity, or that Vanderbilt's proffered non-retaliatory reasons for any actions it took were pretextual.

(2) Whether Plaintiff Was Subject to an Adverse Employment Action

The Supreme Court has stated that the standard for proving an adverse employment action in the retaliation context is not as high as the standard applied in the disparate-treatment context. *Burlington N. & Santa Fe Ry. Co. v. White*, 126 S. Ct. 2405, 2414–16 (2006). In *White*, the Court held that to prove retaliation "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Id.* at 2415 (quoting *Rochon v. Gonzales*, 438 F.3d 1211, 1219 (D.C. Cir. 2006)). The reference to a "reasonable employee" establishes "an objective standard" that is "judicially administrable," and the "materiality" requirement excludes complaints based on "trivial harms." *Id.* The Court also recognized that "the significance of any given act of retaliation will often depend on the particular circumstances. Context matters." *Id.* Thus:

> A schedule change in an employee's work schedule may make little difference to many workers, but may

> matter enormously to a young mother with school age children. A supervisor's refusal to invite an employee to lunch is normally trivial, a nonactionable petty slight. But to retaliate by excluding an employee from a weekly training lunch that contributes significantly to the employee's professional advancement might well deter a reasonable employee from complaining about discrimination. Hence, a legal standard that speaks in general terms rather than specific prohibited acts is preferable, for an act that would be immaterial in some situations is material in others.

Id. at 2415–16 (quotation marks and internal citations omitted).

Plaintiff alleges that Vanderbilt retaliated against her by (1) conducting a biased investigation into her report of sexual harassment; (2) denying her access to her office; (3) suspending her from working on the AMPT Grant; and (4) acquiescing in Dr. Kessler's refusal to support her own grant proposals to the extent Plaintiff believes he should have, or to include her on his own grant proposals submitted after June 2005.

First, regarding Plaintiff's claim that the OED's investigation was biased, the evidence to support such a claim consists solely of Plaintiff's own conclusory and unsupported allegations. The portions of the record to which Plaintiff cites simply

to do not support her claims.[4] Moreover, Plaintiff cannot and has not alleged that she suffered any adverse employment action resulting from the allegedly biased investigation.

With respect to Plaintiff's allegation that she was denied access to her office, even assuming that that Plaintiff has presented sufficient evidence that Vanderbilt in fact denied her access to her office immediately after the June 29, 2005 meeting, there is no dispute that Plaintiff left Nashville the next day on a previously planned trip, and that when she returned to Vanderbilt around August 20 she had full access to her office. In other words, at most, Plaintiff lacked access to her office for one or two days. As such, any lack of access was temporary and obviously resulted from Vanderbilt's concern that she not inadvertently come into contact with Kessler. The Court finds that any such temporary denial of access to her office, even considered in conjunction with Plaintiff's other allegations of retaliatory action, was not sufficiently material to constitute an actionable adverse employment action.

With respect to Plaintiff's allegation that she was suspended from working on the AMPT Grant, she does not dispute that Kessler was likewise

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4 Even assuming, as we must at this stage in the proceedings, that Plaintiff's version of events is the true and correct one, the Court cannot say that Vanderbilt's decisions resulting from the OED investigation and the independent faculty committee's recommendations, based on essentially the same allegations as those presented here, were unreasonable.

suspended from working on the grant and that a substantial reason for the length of the suspension had to do with the unavailability of [18F]fallypride. However, Plaintiff has also alleged that up until the meeting on June 29, work on the AMPT Grant constituted 90% of the work she conducted at Vanderbilt, and that being required to cease work on the Grant during the fall of 2005 left her with essentially no job duties. The Court therefore finds that for purposes of establishing her *prima facie* case of retaliation, Plaintiff has raised a question of fact as to whether suspension of the grant constituted a materially adverse change in the terms and conditions of her employment. *White*, 126 S. Ct. at 2410.

Plaintiff also alleges that she has not received obtaining grant funding, and that as a result she has not achieved 75% funding of her salary through outside sources within the three-year time frame set forth when she was first employed by Vanderbilt. Although Vanderbilt argues that the terms, conditions and benefits of Plaintiff's employment have not changed, there is no dispute that Plaintiff's one-year contract, which expired in July 2007, was not renewed for a full year as it had been in the past. Instead, Plaintiff received a six-month contract renewal, essentially a grace period during which to attempt to secure funding. A jury might well infer under the circumstances that Vanderbilt chose to extend her contract despite her lack of funding in order to avoid the more blatantly adverse employment action of an outright non-renewal of her

contract. The Court therefore finds that the university's alleged failure to support Plaintiff's grant-writing or to ensure her inclusion on other, more senior faculty member's grants may have had a bearing on her opportunities for professional development and career advancement and therefore "might have dissuaded a reasonable worker from making or supporting a charge of discrimination," *White*, 126 S. Ct. at 2415 (2006); *cf. Nakis v. Potter*, 422 F. Supp. 2d 398, 420 (S.D. N.Y. 2006) (holding that a supervisor's denial of Postal Service employee's request to retake a computer software class was an adverse employment action as the employee's request had bearing on her professional development and promotional opportunities); *Santa Cruz v. Snow*, 402 F. Supp. 2d 113, 127 (D.D.C. 2005) (noting that the denial of a training opportunity on allegedly discriminatory grounds can constitute an "adverse employment action" if the denial materially affects the employee's promotional opportunities). Since the Court must construe the facts and make all inferences in Plaintiff's favor for purposes of this summary judgment motion, the Court finds that Plaintiff has established a jury question as to whether she was subject to an adverse employment action sufficient to support a retaliation claim, based generally on Kessler's and Vanderbilt's alleged failure to support her grant work. Whether Plaintiff has presented sufficient evidence that the Defendants actually failed to support her specific grant-writing efforts, as discussed below, is a different question.

(3) Whether the Alleged Adverse Actions Were Causally Related to Plaintiff's Protected Activity

In order to show a causal connection, a plaintiff must produce sufficient evidence from which an inference can be drawn that the adverse action would not have been taken had the plaintiff not filed a discrimination action. *EEOC v. Avery Dennison Corp.*, 104 F.3d 858, 861 (6th Cir. 1997). Although no one factor is dispositive in establishing a causal connection, evidence that the defendant treated the plaintiff differently from identically situated employees or that the adverse action was taken shortly after the plaintiff's exercise of protected rights is relevant to causation. *See Moon v. Transport Drivers, Inc.*, 836 F.2d 226, 229–30 (6th Cir. 1987). The burden of establishing a *prima facie* case in a retaliation action is not onerous, but one easily met. *Avery*, 104 F.3d at 861.

With respect to the suspension of work on the AMPT Grant, there is certainly an immediate temporal connection between Plaintiff's report of sexual harassment and Sandler's decision in that regard. Although the Sixth Circuit has recognized that "in certain distinct cases" temporal proximity alone may constitute indirect proof of causation, *DiCarlo v. Potter*, 358 F.3d 408, 421 (6th Cir. 2004), the Court finds that the temporal proximity in this case, under the particular circumstances presented, is not sufficient to establish causation. Alternatively, even if we consider the temporal

proximity alone to give rise to an inference of causation, Plaintiff cannot rebut Vanderbilt's proffered legitimate, non-retaliatory reason for its action. Specifically, Vanderbilt asserts that the decision to suspend work on the AMPT Grant was not retaliatory but resulted from Vanderbilt's concern with making sure Plaintiff did not have to come into any direct contact with Kessler. Work on the Grant could not continue without Kessler, because he was the Principal Investigator on the Grant and the only person authorized to administer [18F]fallypride. For that reason, to be fair, Vanderbilt suspended work on the Grant altogether, for both Kessler and Plaintiff. Meanwhile, it is undisputed that the fallypride needed to conduct scans for the AMPT Grant became temporarily unavailable, so work on the grant would have come to a stop anyway. When fallypride again became available in early 2006, Plaintiff and Kessler both went back to work on the Grant, communicating with each other via e-mail through an intermediary or by copying both their attorneys on all their communications.

Plaintiff asserts that she could have conducted work on the grant that would not have required her to work directly with Kessler and would not have involved scanning patients or the use of fallypride. The Court finds that her statement in that regard is totally conclusory and does not rebut Vanderbilt's proffered reason for temporarily suspending work on the Grant. Plaintiff's claim of retaliation based on suspension of work on the AMPT Grant therefore is

not tenable.

With respect to the Plaintiff's own grant proposals on which she alleges she received insufficient support from Kessler specifically and Vanderbilt generally, the Court finds that Plaintiff has presented evidence that, viewed in the light most favorable to Plaintiff, may be considered to give rise to an inference of a causal connection. The alleged lack of support for Plaintiff's grants and Kessler's failure to include her on his own grants all occurred within the two years following Plaintiff's initial report of harassment. Because the OED's investigation into Plaintiff's allegations took nearly six months, and Vanderbilt took another six or seven months to determine whether disciplinary action was warranted, Plaintiff's report had on-going repercussions for Kessler. In addition, Plaintiff alleges that prior to her making a report of harassment, Kessler went out of way promptly to assist her with her grant proposals, and included her as a co-investigator on all of his grant proposals that involved PET technology. She alleges this changed after her report. Considering all of the factors together the Court finds that Plaintiff has created an issue of fact as to whether the allegedly diminished support for her grant activities was causally related to her harassment report.

(4) Vanderbilt's Non-Discriminatory Reasons for Its Actions and Whether Plaintiff Has Presented Evidence of Pretext

As discussed above, the Court finds that Plaintiff has not presented sufficient evidence to support a *prima facie* case of retaliation based upon the allegedly biased investigation into her report of sexual harassment, the denial of access to her office or the suspension of work on the AMPT Grant. With respect to her allegations that the Defendants retaliated against her by failing to support her grant-writing efforts or to include her on Kessler's grant proposals submitted after June 2005, however, there are disputed issues of fact as to each of the elements of her *prima facie case*. The Court will therefore consider the evidence relevant to each of the six different grant proposals Plaintiff has submitted and the three grant proposals Kessler has submitted since June 2005, to determine whether Defendants have proffered legitimate, non-retaliatory reasons for their actions and whether Plaintiff has provided evidence that such reasons are pretextual.[5]

(a) Plaintiff's Sex Differences Grant Proposals

Plaintiff's "Sex Differences Grant" proposal was the first grant proposal she ever submitted and

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5 In her Complaint, Plaintiff also alleged that Kessler removed her as co-investigator from grant proposals he resubmitted after June 2005. Kessler has testified that he did not resubmit any grant proposals after June 2005 that he previously submitted prior to that date. Plaintiff has not offered any evidence to the contrary.

she submitted it three times without its ever being accepted for funding. She submitted it the first time to the Mental Health Institute in January or February 2005 with Kessler named as co-investigator. After the proposal was rejected, she prepared to re-submit it on November 1, 2005 and asked Drs. Patton and Sandler on October 24, 2005 for permission to name Kessler as co-investigator and to obtain his assistance with preparing the proposal, and also requested assistance with statistical analysis to support it. Patton and Sandler agreed to speak to Kessler and to contact the Biostatistics Department that same day. Kessler, when approached with Plaintiff's request for his assistance, agreed to be co-investigator on the grant, but because he was scheduled to leave town the next day, he was not able to review the grant proposal or to help Plaintiff address some of the reasons the grant was not accepted for funding in the first place. He did, however, write and sign a letter of support indicating his participation as coinvestigator, and he recommended someone in the statistics department at Vanderbilt from whom Plaintiff might be able to obtain assistance. Sandler and Patton contacted the Biostatistics Department to request assistance for Plaintiff, but, according to Plaintiff, she was ultimately told there was no one who could help her given the short notice and the November 1 submission date.

In other words, the Defendants have presented evidence that they tried to help but were unable to provide as much assistance as Plaintiff

wanted given the short notice and the fact that Kessler had a previously scheduled trip. Plaintiff has not come forward with any evidence to rebut the Defendants' nondiscriminatory reasons for not doing more. Plaintiff's retaliation claim based upon any of the Defendants' alleged failure to offer greater assistance with the first resubmission of the Sex Differences Grant therefore fails.

Plaintiff resubmitted the Sex-Differences Grant proposal again, this time to the NIH, in October 2006. Kessler again agreed to serve as co-investigator on the grant. Plaintiff alleges, however, that "his comments were not meaningful and were provided at the last minute so that it was impossible for Plaintiff to incorporate any of his suggestions into the proposal." (Doc. No. 107, at 34.) Plaintiff's allegations in that regard are simply not supported by the record. She provided Kessler with the grant paperwork for him to review on Friday afternoon, September 29, 2006 which, she claims, was sufficient time for him to review it and provide comments before the Monday, October 2 submission deadline. She also asserts that, prior to June 2005, Kessler always reviewed her work immediately. When Kessler had not gotten back to her by Sunday afternoon, she called Joann Fields, Grant Review Analyst for the Radiology Department, who called Kessler around 3:00 p.m. and asked him why he had not sent his comments to Plaintiff. He responded that he had not yet had a chance to look at the grant as he had a lot going on, but that he would do so immediately and send his comments. An hour and a

half later, he sent Plaintiff a lengthy e-mail with comments, suggestions and encouragement, but Plaintiff apparently did not incorporate any of his suggestions into the final grant application before submitting it the next day.

Regardless, Plaintiff's contention that Kessler's comments were insufficient and came too late to be helpful is conclusory and unsupported and is not sufficient to create a jury question as to whether Kessler's participation was inadequate, even if considered in light of the other evidence in the record. The simple and undisputed facts are that Kessler agreed to be co-investigator on the grant, and he reviewed the proposal and provided thoughtful comments within 48 hours of being requested to do so. Plaintiff received his comments prior to the submission date of the grant. Plaintiff has not shown that Kessler's failure *immediately* to review and provide comments on this grant was retaliatory in any way, or that his proffered non-discriminatory reason for not getting to it quicker—that he had not had time—was pretextual.[6] Plaintiff's retaliation claim based upon Defendants' alleged failure to provide greater assistance with this grant also fails.

(b) Plaintiff's Borderline Personality Grant Application

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6 Plaintiff has also not shown that Kessler's failure to respond more quickly constituted a *materially* adverse employment action.

Plaintiff alleges that, in February 2006, she submitted a grant proposal to the NIH entitled "Imaging of Dopamine Release in Borderline Personality Disorder" (the "BPD Grant"). (Riccardi Aff. ¶ 66.) She claims that Kessler refused to assist her with this grant in any way, despite having agreed in March 2005 to serve as co-investigator on the grant proposal, that Vanderbilt acquiesced to his refusal and that his refusal was retaliatory.

The evidence, viewed in the light most favorable to the Plaintiff, shows that she prepared the paperwork for this grant and was ready to submit it in June 2005, but decided for strategic reasons to wait until early 2006 to submit it. Kessler was listed as co-investigator on the application; he reviewed the draft proposal in March or April 2005 and provided comments and suggestions at that time and even offered to allocate money from his other grants to fund two or three scans so that Plaintiff would have pilot data to support the BPD Grant proposal. (Riccardi Aff. ¶¶ 67, 68, and Ex. 5.) Plaintiff does not allege, however, that Kessler saw the final version of the application. Kessler asserts that he did not, and further claims that his agreement to assist with the grant in early 2005 was preliminary and anticipated his involvement in developing procedures for the study.

In a letter to Vanderbilt's counsel dated September 26, 2005, Plaintiff's counsel at that time, David Raybin, stated: "With regard to the new grant

[presumably referring to the BPD Grant proposal] Dr. Riccardi finds it satisfactory that Kessler's name would be on the proposal so as to enhance its chance of being accepted. However, there must be a clear understanding that if it is accepted and funded, he would be replaced as the person with whom she would work . . ..." (Doc. No. 74-16, at 24.)

In January 2006, Plaintiff asked Kessler to sign the BPD Grant proposal as a co-investigator but she did not contact him directly or give him a complete copy of the submission. Instead, she apparently gave paperwork to Kessler's secretary who then asked him to sign it. Kessler notified Plaintiff's attorney through his own attorney that he was not willing to act as co-investigator on the grant. In a declaration filed in support of his motion for partial summary judgment, Kessler states that, as he understood the project, the administration of medication could cause exacerbation of patients' underlying symptoms. This risk could be minimized by the use of appropriate research procedures, but Kessler claims he had no information regarding what procedures Plaintiff planned to put in place to minimize this risk. He asserts he was also concerned that the safety of patients could be jeopardized by Plaintiff's refusal to contact him directly if emergencies arose during the course of the research. Kessler also asserts that ethical rules require that researchers who sign grants understand their research commitments and the essential aspects of the research project involved and that, without further information about Plaintiff's

proposed procedures on this grant, he did not feel he could satisfy his ethical obligations. Finally, Kessler claims that he was not the only person at Vanderbilt who could co-sign the grant proposal, and that the proposal was ultimately submitted by Plaintiff with a different co-investigator.

In response, Plaintiff asserts only that she never "refused" to provide a copy of the complete grant paperwork to Kessler, but she does not contend that she provided him with a complete copy of the proposal, nor has she rebutted or called into question any of Kessler's asserted reasons for refusing to sign the grant as a co-investigator. She faults Vanderbilt for acquiescing in Kessler's refusal to join in this grant proposal and for not offering her the assistance of "an alternative faculty member with relevant expertise to serve as co-investigator on the grant," but also states that Kessler was the only Vanderbilt faculty member to possess such relevant expertise. (Doc. No. 93, Riccardi Aff. ¶¶ 70, 71.) Regardless, when Sandler learned that Kessler did not feel comfortable being co-investigator on the BPD Grant proposal, he suggested to Plaintiff that another faculty member could serve as co-investigator, and the University would designate another faculty member to be an authorized user of the radioactive drugs to be used in connection with the imaging associated with the grant application. (Sandler Aff. ¶ 31 and Ex. 11.)

Sandler also testified that the reasons he did not instruct or direct Kessler to participate in

Riccardi's grant application included (1) his concerns that Kessler and Plaintiff could not meaningfully collaborate on a project such as this one given Riccardi's repeated statements, both directly and through her attorney, regarding her refusal to have any direct contact with Kessler; and (2) principles of academic freedom inherent in any University community, and set forth in the Faculty Manual, rendered it inappropriate for him to attempt to dictate to Kessler to join in a specific project. (*See* Sandler Aff. ¶ 32.)

The Court finds that, assuming for purposes of this motion that Plaintiff has established a *prima facie* case based on Kessler's refusal to support this grant and Vanderbilt's and Sandler's acquiescence in that decision, the Defendants have presented legitimate, non-discriminatory reasons for the action, which Plaintiff has failed to address. She has not pointed to any evidence that creates a disputed issue of fact as to whether Kessler's reasons for refusing to be co-investigator on her BPD Grant were pretextual, and Plaintiff's attorney's admission that Plaintiff wanted Kessler named on the grant proposal but did not really intend to work with him on the project lends further support to Kessler's expressed ethical concerns. Plaintiff's retaliation claim based on Kessler's withdrawal of his support for the BPD Grant therefore fails.

(c) Plaintiff's Autism Grant Proposals

In June 2006, Plaintiff submitted an NIH

grant proposal on autism. Kessler made comments on the initial NIH grant and signed it as co-investigator. Plaintiff alleges that Kessler's comments were "not meaningful and comprised all of one page" (Riccardi Aff. ¶ 74), and that his failure to provide more extensive assistance was somehow retaliatory. The Court finds that the record shows that Kessler agreed to be co-investigator on the grant and provided substantive commentary on Plaintiff's draft proposal. Plaintiff's allegations that his comments were too short and not meaningful are conclusory and unsupported, and she has not demonstrated that she suffered a materially adverse employment action in connection with Kessler's assistance on this grant proposal.

In August 2006, Plaintiff submitted an internal Discovery Grant proposal, also on autism. She contends that Kessler failed to assist her with that grant application and that his refusal to do so was again retaliatory. With respect to this grant proposal, the undisputed evidence shows that Plaintiff initially requested that Kessler be co-investigator on an unspecified discovery grant on Friday, August 11, 2006; the request appeared as basically a postscript at the end of an e-mail discussing their work on the AMPT Grant. Plaintiff did not indicate the subject of the grant or the date on which she intended to submit the proposal. Rather, she simply stated, "I am apply to a discovery grant and I am requesting your willingness to be on the grant." (Doc. No. 82-2, at 4.) On Monday, August 14, Kessler responded to the e-mail, first

commenting on the other matter being discussed and then adding, "In regard to the discovery grant, I would like to know the topic of the grant and would like to be able to have a chance to make meaningful comments before its submission." (*Id.*)

In a response that can only be characterized as snippy, sent later the same day, Plaintiff asked,

> As long as your help for the discovery grant [sic], why do you want to know about the topic? would this change you [sic] availability in terms of being an investigator? You are the only one who does PET neuroimaging at Vanderbilt as you may well know. Surely the only one I can ask. I am not sure about what you mean by 'to make meaningful comments before its submission'. Please explain.

(*Id.*) She did not, however, answer Kessler's question as to what the topic of the grant was, nor did she indicate the date on which she planned to submit the proposal.

> The next day, August 15, Kessler replied: Regarding the Discovery Grant, when an investigator agrees to be a collaborator, she or he agrees to provide support and to be responsible for the scientific conduct of that grant. In this regard it is much like a paper where one must sign a release stating that you accept responsibility for the content of the paper and have no

> conflict of interest. I would very much like to help you with this grant and hope that you receive this funding. The ethical conduct of research however requires that I know what I am pledging to support and what I am accepting responsibility for. I [am] not trying to be difficult in this regard, but knowing the content of the grant applications on which you are a collaborator is a basic responsibility of each investigator. I hope that this explains the basis of my previous comments to you.

(Doc. No. 82-2, at 2.)

The following day, on Wednesday, August 16, 2006, Plaintiff responded with slightly greater civility:

> Regarding the Discovery Grant, I perfectly agree with you. Grant is on autism. I requested your willingness to be on the grant on Friday, you answered on Monday and than [sic] – after one more day of (frantic) consultation – yesterday. Do you think you can give your consent today??

(*Id.*) Again, however, she did not indicate when she intended to submit the grant proposal.

The following morning, Thursday, August 17, Kessler responded that he would be pleased to assist with the grant and that he presumed it would be consistent with the NIH autism grant proposal

previously submitted. He also included some preliminary comments and suggestions and stated, "I would like to help in the composition and editing of this application so that, as much as possible, the grant application is clear and compelling." (*Id.*) An hour later, Plaintiff responded: "Thanks but unfortunately it is too late; I had to submit the grant." (Doc. No. 82-2, at 1.) In other words, Plaintiff waited to request assistance until less than a week before she planned to submit the grant proposal, never told Kessler the date on which she planned to submit the proposal, and then wasted several days quibbling about whether he really needed to know the grant's topic before agreeing to co-sign it.

In her response in opposition to summary judgment, Plaintiff claims that Kessler's response to her request that he assist with the Discovery Grant was disingenuous because, as her mentor, Kessler had "full knowledge of [Plaintiff's] grant work" and knew that she could only be referring either to the Autism Grant or Sex Differences Grant. In addition, Plaintiff claims Kessler was well aware of the submission dates for Vanderbilt Discovery Grants because there are set quarterly dates for submission of such grant proposals and he had submitted his own discovery grants. Finally, Plaintiff asserts that, prior to the filing of her formal complaint against him, Kessler would "immediately pledge his assistance to her with her grants even before she requested any help." (Riccardi Aff. ¶ 77.)

Plaintiff's position with regard to the Kessler's lack of assistance on the Autism Grant is beyond ridiculous. Her assertions that Kessler must have known the topic of the grant and its due date are conclusory and not based on personal knowledge. Her approach to soliciting his assistance was patently unreasonable: She never sent him the grant documents, never told him what her submission deadline was, and in any event did not request his assistance sufficiently in advance of her unspoken deadline for Kessler to have had time to provide meaningful assistance. Even assuming his failure to co-sign the Discovery Grant could be considered a materially adverse employment action, Plaintiff has not presented any evidence suggesting that such failure was causally related to her having made a discrimination claim against him, nor has she rebutted Kessler's proffered legitimate, non-discriminatory reason for that failure—namely, that he agreed to support the grant only to discover Plaintiff had already submitted it.

Plaintiff's retaliation claim based on Kessler's allegedly insufficient support of her Autism Grants therefore fails.

(d) Plaintiff's NARSAD Grant Application

NARSAD is a non-profit organization that provides funding for scientific research in severe psychiatric brain and behavior disorders. (Doc. No. 82, Declaration of Robert M. Kessler ("Kessler Decl.") ¶ 18.) One of NARSAD's grant programs is for young

investigators and requires that the applicants have an "on-site mentor or senior collaborator who is an established investigator. . . . The mentor/sponsor role is usually extensive for fellowship extension (mentor), and more senior colleague/advisor (sponsor) for an applicant well prepared to initiate independent science." (Kessler Decl. Ex. B (NARSAD application guidelines).) Plaintiff wanted to submit a NARSAD Young Investigator grant proposal in July 2007, and first asked Kessler to sign her Young Investigator grant application as "senior author" in April 2007.

> In his response to Plaintiff's e-mail request in that regard, Kessler stated:
> I have received your emails asking me to serve as your NARSAD Young Investigator Award Mentor/Sponsor. I feel I must respectfully decline to attempt to serve in that capacity. As you know, the NARSAD Young Investigator Award requires a "Mentor/Sponsor" and the NARSAD web site states that the Mentor/Sponsor must provide a letter which states the mentor's commitment to facilitate the research proposal. As you refuse to communicate with me except by email, refuse to accept any documents that display my handwriting or signature, and given the obvious disdain shown toward me and the general adversarial approach taken by you, I do not see how I could effectively fulfill the duties required of a Mentor/Sponsor for this project. Additionally, I believe that I

> would have to disclose this situation to NARSAD in a Mentor/Sponsor letter so that they could adequately evaluate whether or not I can fulfill the duties as required. Given these circumstances, I suggest that you contact Dr. Jeremy Kaye, Chair, Department o f Radiology, who can assist you in finding a suitable mentor for this application.

(Doc. No. 93-10, at 2.) Kessler also attested in his Declaration that prior to responding to Plaintiff's request he contacted a colleague who, like himself, was also a member of the NARSAD Scientific Counsel to determine whether he should or could be Plaintiff's Mentor/Sponsor given the strained relationship between them and their method of communicating. Kessler's colleague advised him that he would be required to disclose to NARSAD the method of communication, and also told him that he believed that NARSAD would not fund a grant where the communications between the Mentor/Sponsor and investigator were so limited and restricted. Based upon that information and his own concerns, Kessler alleges that he reasonably believed he could not fill the role of mentor and his agreeing to do so would cause the grant application to be rejected. (Kessler Decl. ¶ 19.)

In her response, Plaintiff states only that she did not ask Kessler to be her "mentor" but her "senior collaborator," and that there was no one else at Vanderbilt with relevant PET neuroimaging experience to serve in that role. Plaintiff also points out that the role of senior collaborator to a more

established young investigator was less intensive than that of "mentor," that Kessler had agreed to co-sign other grant proposals, and that they continued to collaborate together on the AMPT Grant. She does not, however, refute Kessler's evidence that the involvement of a mentor or senior collaborator on a NARSAD Young Investigator's grant is intended to be substantially more intensive than that of a co-investigator on other types of grants, nor has she addressed his averments that he felt obligated to disclose to NARSAD their method of communication and that, given the strained and limited communications between them, he was concerned that if he sponsored the grant proposal it would not be funded.

The Court appreciates the difficult nature of the situation in which Plaintiff finds herself: The Court of course must presume at this stage in the proceedings that Plaintiff's allegations of sexual harassment and assault are true. Accordingly, under those circumstances it is understandable that Plaintiff would have reservations about working and collaborating with the alleged perpetrator of the harassment and assault, even when that person is the only person at Vanderbilt who does the type of research Plaintiff is interested in pursuing and therefore the only person capable of furthering her career. The fact remains that Kessler's concerns about being a mentor/sponsor to a NARSAD Young Investigator with whom communications pose a problem are likewise reasonable, and Plaintiff has not offered any evidence to suggest that Kessler's

stated reasons for not agreeing to serve in the Mentor/Sponsor role for the NARSAD grant application were pretextual. Likewise, Plaintiff has likewise not shown that Vanderbilt failed in any duty to assist her. Her retaliation claim based upon the alleged lack of support for her NARSAD grant application therefore fails.

(c) Kessler's Post-June 2005 Grant Proposals

Kessler submitted three grant proposals after June 2005 on which he did not include Plaintiff as a co-investigator: (1) the "Methamphetamine Grant" submitted to the NIH; (2) an internal Vanderbilt Discovery Grant on "Dopamine and Depression"; and (3) the "Risperidone Grant" submitted to Janssen, L.P. in April 2006. As set forth below, the Court finds that Plaintiff has alleged sufficient facts from which a jury might reasonably conclude that Kessler's motive in not including Plaintiff as a co-investigator on either the Methamphetamine Grant or the Risperidone Grant was retaliatory.

Methamphetamine Grant Proposal

Kessler concedes he did not include Plaintiff as a co-investigator on his Methamphetamine Grant proposal submitted in October 2005, the only grant he has submitted to NIH after June 2005. He denies that Plaintiff's exclusion from the grant proposal was retaliatory in any way. Kessler states in his declaration submitted in support of his own motion for partial summary judgment that he did not

include Plaintiff in the project because the budget for the Methamphetamine Grant was small and did not allow for the inclusion of investigators who, like Plaintiff, did not have experience in the area of drug abuse. (Kessler Decl. ¶ 21.)

Plaintiff, on the other hand, alleges that "she was named as a co-investigator on all of Dr. Kessler's grants submitted for funding since she began work at Vanderbilt" up until she filed her complaints against him. (Doc. No. 107, at 37; Riccardi Dep. at 309:15 311:11.) Further, she claims she was included on several grants for which she did not, at the time of the grant proposals, have any research experience or expertise in the area of the grant. (Riccardi Aff. ¶¶ 94, 95.) On that basis, she claims that it was not necessary for her to have experience in the particular study area to serve as a co-investigator on a grant involving PET imaging, since her function would have been to serve as a medical doctor performing neuroimaging analysis using PET, the same role she played for other grants on which she worked with Kessler. (Riccardi Aff. ¶ 97.) Plaintiff also points out that, while Kessler posits Plaintiff's lack of experience and expertise in the area of drug abuse as his non-discriminatory reason for not naming her as co-investigator, his grant application cites a research paper authored by Plaintiff. (*Id.*)

As to the size of the grant budget, Plaintiff claims that Kessler could have adjusted the grant budget in order to include another investigator on

the grant. For instance, instead of allocating David Zald, PhD, an 8% effort with salary, he could have allocated only 5% to Dr. Zald as he had an earlier grant. (Riccardi Aff. ¶ 98.) He could also, she claims, have given her the opportunity to be listed on the grant without funding.

In reply, Kessler argues that Plaintiff has no personal knowledge about the requirements for a grant on which she had no involvement, and therefore that her protestations that experience and expertise in the area of drug abuse were not necessary are merely conclusory assertions that are not sufficient to give rise to a material issue of disputed fact. Kessler also points out that Plaintiff's claim that he could have manipulated the budget to include her is likewise not based upon personal knowledge, in addition to the fact that working on an unfunded grant would not have contributed to Plaintiff's salary or, therefore, her ability to stay at Vanderbilt. In sum, Kessler argues that Plaintiff has no admissible evidence to establish that his proffered reasons for not including her on the grant--that the small budget of the grant was not sufficient to include co-investigators who lacked the requisite experience and expertise—were not honestly held beliefs upon which he reasonably relied given the facts before him at the time the decision was made.

The Court nonetheless finds that the Plaintiff has created a genuine issue of disputed fact as to whether Kessler's proffered reasons for not including her on the Methamphetamine Grant proposal were

pretextual. There is a genuine issue of material fact as to whether Plaintiff had been included on all Kessler's NIH grant proposals involving PET after she arrived at Vanderbilt up until June 2005, regardless of her expertise and experience in the particular area of study. There is likewise a genuine issue of material fact as to whether Plaintiff reasonably expected to be included on all of Kessler's grants involving PET imaging. Clearly, the fact that Plaintiff refused to be in direct contact with Kessler after June 2005 certainly made working together more difficult. Notwithstanding, Plaintiff's reluctance in that regard must be considered reasonable at this juncture, since the Court must view the facts in the light most favorable to the Plaintiff. Moreover, the parties have been able to continue to work together on the AMPT Grant, so it must be assumed that they would have been able to work together in a similar fashion on other grants.

Kessler's Dopamine and Depression Grant Proposal

Kessler also submitted a small internal Vanderbilt Discovery Grant proposal in March 2006 on Dopamine and Discovery, on which he did not include Plaintiff as a co-investigator. Kessler alleges that this internal grant only permitted two investigators and required participation by two different departments. Plaintiff therefore was not even eligible for inclusion on this grant. (Kessler Decl. ¶ 23.) In his deposition, he stated he did not include Plaintiff because at the time of

hissubmission collaboration with Plaintiff had been "exceptionally difficult." (Doc. No. 89-3, Deposition of Robert Kessler, M.D. ("Kessler Dep.") at 837:2–5.)

Plaintiff argues that Kessler's claim is "disingenuous" because the internal grant proposal did not request funding for any part of his or his co-investigator's salary in the budget, and that Internal Discovery Grants typically do not fund the salaries of the investigators because the grant money is allocated to the study itself instead. Plaintiff claims that the purpose of a Discovery Grant is "to obtain pilot data to then use as support for a larger grant submission where a portion of the investigators' salaries would be funded. (Riccardi Aff. ¶ 102.) She also claims she would have "gladly" participated on this grant even without funding.

Regardless, Kessler states he did not include any other investigators from the Radiology department, so Plaintiff was not treated differently than any other Radiology Department members. Plaintiff has not refuted that fact, nor the contention that the internal grant only permitted two investigators and they each had to be from different departments. Plaintiff therefore has not succeeded in pointing to specific facts in the record that refute or create an issue of fact concerning the Kessler's legitimate, non-discriminatory reason for his failure to include her as a co-investigator on his Internal Discovery Grant.

Kessler's Risperidone Grant Proposal

In his deposition, Kessler discussed his Risperidone Grant proposal, submitted to Jansen, LP in April 2006. At his deposition, in response to the question as to why Plaintiff was not assisting him in the preparation of that proposal, Kessler stated that "it was far simpler just to write it, and her help was not needed." (Kessler Dep. at 838:19–20.) According to Plaintiff, Risperidone is an antipsychotic medication and the grant involved PET scanning of individuals diagnosed with schizophrenia. She alleges that the subject of the study is similar to the previous neuroimaging analysis work she and Dr. Kessler have done together. Further, although Kessler submitted the proposal without input from anyone else, he included Dr. Richard Shelton as a co-investigator on the grant, despite Dr. Shelton's alleged lack of expertise in schizophrenia or neuroimaging. These facts are sufficient to give rise to an inference that Kessler's stated reason for not including Plaintiff on the grant—that it was just too much trouble—was pretextual and that the true motive in excluding Plaintiff from this grant proposal was retaliatory.

***(5)* Issues of Fact Preclude Summary Judgment on Plaintiff's Retaliation Claim Against Vanderbilt**

In sum, Plaintiff lacks evidence to support her claim of retaliation based upon Vanderbilt's or Kessler's alleged lack of support for her own grant proposals. Notwithstanding, the Court finds that

Plaintiff has presented sufficient evidence from which a reasonable jury might conclude that Kessler, in his capacity as Plaintiff's supervisor, retaliated against Plaintiff by refusing to include her as a co-investigator on his own Methamphetamine and Risperidone grant proposals. Because Kessler was in a supervisory position vis-à-vis the Plaintiff, his actions are imputed to Vanderbilt for purposes of Plaintiff's retaliation claim. *See Wathen v. Gen. Elec. Co.*, 115 F.3d 400, 405–06 (6th Cir. 1997) (noting that agents of the employer cannot be individually liable under Title VII, but that the "obvious purpose" of the use of the word "agent" in the statute was "to incorporate respondeat superior liability into the statute" (citations omitted)). Vanderbilt's motion for summary judgment as to the retaliation claim against it must therefore be denied.

C. Plaintiff's Retaliation Claim Against Kessler Individually Under the THRA

As indicated above, the THRA makes it a discriminatory practice for any person to retaliate against another person "because such person has opposed a practice declared discriminatory by this chapter or because such person has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter." Tenn. Code Ann. § 4-21 *301.* The THRA, unlike Title VII, permits retaliationclaims against individual "persons" and not merely against employers. *Emerson v. Oak Ridge Research, Inc.*, 187 S.W.3d 364, 377 (Tenn. Ct.

App. 2005).

As discussed above, there is no question that Plaintiff engaged in protected activity, first when she reported sexual harassment to the ODC, and later when she filed a formal complaint with the EEOC. Kessler was aware of Plaintiff's exercise of protected rights. He maintains, however, that the actions of which Plaintiff complains, even if true, do not constitute materially adverse employment actions sufficient to support a claim for retaliation under the THRA. In addition, Kessler claims that Plaintiff cannot establish that he took any adverse employment action against her or that any such alleged action is causally related to the protected activity. Finally, Kessler asserts that even if his actions could be considered adverse employment actions, he has proffered legitimate, non-discriminatory reasons therefor, which Plaintiff cannot rebut.

As set forth above in connection with the discussion of the retaliation claim against Vanderbilt, the Court finds that Plaintiff has not presented sufficient evidence from which a jury could conclude that Kessler's alleged lack of support for Plaintiff's own grant proposals was retaliatory. However, Kessler's motion for partial summary judgment on the retaliation claim against him must be denied for the same reasons Vanderbilt's motion as to that claim must be denied: The actions upon which the claims against Vanderbilt are premised were all actions taken individually by Kessler, and

Plaintiff has demonstrated the existence of material disputed facts as to whether Kessler's failure to include her on his own Methamphetamine and Risperidone Grant proposals was retaliatory.

D. Retaliation Claim Against Sandler Under the THRA

Although she did not include an "aiding and abetting claim" in her Complaint, Plaintiff now alleges that Sandler is subject to individual liability for retaliation under the "aiding and abetting" provision of the THRA. Specifically, the THRA makes it a discriminatory practice to "[a]id, abet, incite, compel or command a person to engage in any of the acts or practices declared discriminatory" by the THRA, including retaliation for engaging in activity protected by the THRA. Tenn. Code Ann. § 4-21-303(2). It is well settled law that individuals may be held liable for aiding and abetting an employer's discriminatory conduct by, for example, obstructing an investigation of the discrimination and thereby preventing corrective action from being taken. *See Rhea v. Schoonover*, 395 F. Supp. 2d 696, 706 (W.D. Tenn. 2005) (denying defendants' motion to dismiss, noting that an individual who instructs an employer to engage in a discriminatory practice will be held liable for this retaliatory act).

Plaintiff argues that Sandler is liable for aiding and abetting retaliatory conduct under the THRA because he "[knew] that [Vanderbilt's] conduct constituted a breach of duty and [gave]

substantial assistance or encouragement to [Vanderbilt] in its discriminatory acts." (Doc. No. 107, at 62, citing *McNeail-Tunstall v. Marsh USA*, 307 F. Supp. 2d 955, 974 (W.D. Tenn. 2004)). More specifically, Plaintiff asserts that genuine issues of material fact exist as to whether Sandler interfered with and influenced the outcome of the ODC investigation in favor of Kessler; provided false information to Anita Jenious during the course of her investigation; barred Plaintiff from use of her office while allowing Kessler unfettered access to his office and the PET lab; and suspended work on the AMPT Grant.

The Court finds that Plaintiff has failed to produce any admissible evidence that could lead a reasonable jury to conclude that Sandler personally engaged in or aided and abetted any allegedly retaliatory conduct. First, Plaintiff has not pointed to admissible evidence demonstrating that Vanderbilt's ordinary practice is to suspend a faculty member accused of sexual harassment pending investigation, such that Sandler's decision not to do so in Kessler's place could be considered anomalous. As set forth above, Plaintiff's lack of access to her office was brief and did not constitute a material adverse employment action. To the extent Sandler's decision to suspend work on the AMPT Grant adversely affected Plaintiff, it is clear that it affected Kessler as well, and the action was done in an effort to prevent Plaintiff and Kessler from having any direct contact with each other during the immediate aftermath of Plaintiff's report of harassment.

Ultimately, Vanderbilt worked out a system that permitted Plaintiff and Kessler to continue work on the grant without direct contact with each other.

Plaintiff also alleges that Sandler aided and abetted Kessler's retaliation when he acquiesced in Kessler's decisions not to be co-investigator on Plaintiff's BPD grant or to sponsor her NARSAD grant proposal. Even if Plaintiff's allegations in that regard were supported by admissible evidence, she has not rebutted Sandler's legitimate, non-discriminatory reason for not attempting to force Kessler to participate in these grants: that ethical principles pertaining to collaborative grant work and academic freedom prevented him from doing so.

Sandler's motion for summary judgment of the THRA retaliation claim against him individually will therefore be granted, and the cause of action against him dismissed.

IV. CONCLUSION

For the reasons set forth above, the Court finds that Vanderbilt's motion for summary judgment and Dr. Robert Kessler's motion for partial summary judgment must be denied. The motion for summary judgment of the retaliation claim against Dr. Martin Sandler will be granted.

An appropriate Order will enter.

Thomas A. Wiseman, Jr.

Appendix C

Senior U.S. District Judge

APPENDIX D – ORDER, ISSUED BY THOMAS A. WISEMAN, JR., U.S.D.J., DATED 10/05/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. PATRIZIA RICCARDI,)
Plaintiff,)
v.) Civil Action No.
DR. ROBERT KESSLER,) 3:06cv0605
Defendant.)

DR. ROBERT KESSLER,)
Plaintiff,)
v.) Civil Action No.
DR. PATRIZIA RICCARDI,) 3:06cv0615
Defendant.)

ORDER

For the reasons stated from the bench, the Court rules,or defers ruling, on the parties' various motions in limine as follows:

1. Dr. Robert Kessler's Rule 412 Motion (Doc. No. 195): Having conducted the required *in camera* hearing, the Court concludes that Dr. Kessler's testimony regarding conversations between himself and Dr. Patrizia Riccardi, in which Dr. Riccardi allegedly divulged details of her past sexual relationships, will be admissible. This testimony is relevant to the nature of the parties' relationship

and their respective credibility, which are issues

going to the very heart of this case. The probative value of this evidence therefore substantially outweighs the danger of harm to Dr. Riccardi resulting from its admission. Kessler's motion to admit this evidence is therefore **GRANTED**. If the Court deems it advisable, the Court will instruct the jury that it should not consider the evidence for any purpose other than determining the parties' credibility and the nature of their relationship.

The Court also finds that Dr. Shopper's testimony regarding what Dr. Riccardi told him about her sexual past will be admissible as non-hearsay admissions of a party opponent the probative value of which (on the issue of Dr. Rlccardi's credibility regarding her relationship with Kessler) substantially outweighs its potential prejudice to Dr. Riccardi. Dr. Kessler's motion to admit this testimony is therefore **GRANTED**, but without prejudice to Dr. Riccardi's ability to object to specific testimony to the extent it does not bear on her credibility (which may depend on how Dr. Riccardi testifies at trial) or is otherwise beyond the scope of Dr. Shopper's expertise. The other evidence addressed in Kessler's motion is not properly characterized as evidence whose admissibility would be governed by Rule 412, as it consists of testimony from eye witnesses directly concerning the relationship between Dr. Riccardi and Dr. Kessler. The motion to admit this evidence is **GRANTED**,

without prejudice to Riccardi's ability to object to the evidence at the time it is introduced at trial on the basis of personal knowledge, foundation or any other legitimate basis provided by the Federal Rules of Evidence.

2. Riccardi's Motion in Limine to Exclude Evidence at Trial (E-mails Containing Political Jokes) (Doc. No. 141): **GRANTED**. The eight e-mails referenced in Riccardi's motion are cumulative evidence given that there are numerous other e-mails that may be introduced into evidence that do not have political content and given that Riccardi has agreed to stipulate that she sent Kessler jokes and e-mail messages with political content. The Court therefore finds that the potential prejudice to Riccardi if these e-mails are admitted substantially outweighs their probative value.

3. Riccardi's Motion in Limine to Include Evidence at Trial (Defendant's Efforts to Move Assets Out of His Name) (Doc. No. 143): **DENIED**.

4. Riccardi's Motion to Exclude Defendant Kessler's Hearsay Testimony at Trial (Doc. No. 157): The motion to exclude written witness statements is **GRANTED** and the motion to exclude the ODC file generally is **GRANTED**. The motion to exclude testimony from Dr. Sandler, Ingrid Kessler and perhaps others that Kessler told them he was having an affair with Dr. Riccardi is **DEFERRED**. At the time Kessler seeks to introduce this evidence, Riccardi can renew her objections and the Court will

rule at that time.

5. Riccardi's Motion in Limine to Exclude Prior Bad Acts and Sexual History at Trial (Doc. No. 162):

(1) The motion to exclude evidence that Riccardi is "sexually aggressive," *in so many words*, is **GRANTED**.

(2)-(5) The motion to exclude evidence of Riccardi's disagreements with former colleagues at Yale, failure to keep in contact with former Yale colleagues, that she "went AWOL" while at Yale, or that she did not fulfill her professional obligations at Yale is **GRANTED**. The Court may reconsider this ruling if Riccardi opens the door to it.

(6)-(7) The motion to exclude evidence that Dr. Riccardi did not have good emotional stability or dependability or regarding her overall professionalism is **DEFERRED**. The Court will rule on specific evidence as it is introduced based on the objections made and the context of the evidence offered.

(8) The motion to exclude evidence of Riccardi's altercation with Dr. Meltzer is **DENIED**; the motion to exclude evidence of Riccardi's arguments with *secretaries* at Vanderbilt is **GRANTED**.

(9)-(10) The motion to exclude evidence regarding Riccardi's problems with the grant-writing process at Vanderbilt is **DEFERRED**. This evidence may potentially be relevant to Riccardi's claims of retaliation and resulting damages. The Court will rule on specific objections as they are raised in the

context of the trial.

(11) With regard to the motion to exclude evidence that "Dr. Riccardi had a torrid sexual history filled with numerous romantic partners and abortions": to the extent this portion of Riccardi's motion refers to testimony by Kessler or Dr. Shopper, it is **DENIED** for reasons already stated.

6. Riccardi's Motion to Exclude Dr. Kessler's Expert Report (Doc. No. 163): **GRANTED**. The written report itself is inadmissible hearsay. The Court will rule on objections to the content of Dr. Moisy Shopper's in-court testimony at the time such testimony is offered and objections are raised.

7. Riccardi's Motion to Exclude Dr. Kessler's Defamation Claim Which is Based on Statements Alleged Made to, or Relayed by, the AAUW (Doc. No. 190): **DENIED**. Riccardi had adequate notice of the basis of the claim and will not be not prejudiced by its inclusion, particularly given that Kessler's counsel was unable to obtain documentation of the alleged libel until September 26, 2007. Defamatory statements "to others" are referenced in the Pretrial Order, the specific details of which are set forth in Kessler's pretrial brief, filed the same day as the parties Proposed Joint Pretrial Order, and the allegedly defamatory content of which is contained in Kessler's original complaint.

8. Kessler's First Motion in Limine to Exclude Proof of Dr. Riccardi's Body (Doc. No. 146):

DENIED. This evidence is relevant to Dr. Kessler's claim that the parties' had a sexual relationship and Dr. Riccardi's denial of same.

9. Kessler's Second Motion in Limine to Exclude Proof of Dr. Riccardi's Expectations to be included on all Dr. Kessler's Grants (Doc. No. 147): **DENIED**.

10. Kessler's Third Motion in Limine to Exclude Testimony of Dr. Riccardi on the state of mind of others and hearsay testimony (Doc. No 148): **DEFERRED** to trial. Objections based on lack of personal knowledge or hearsay should be raised at trial at the time the evidence is offered.

11. Kessler's Fourth Motion in Limine to Exclude testimony of Dr. Riccardi re: matters of which she has no personal knowledge: **DEFERRED** to trial. Objections based on lack of personal knowledge should be raised at trial at the time the evidence is offered.

It is so **ORDERED**.

Thomas A. Wiseman, Jr.
Senior U.S. District Judge

APPENDIX E

United States District Court for the Middle District of Tennessee

801 Broadway, Nashville, TN 37203, (615) 736-5498

Judge Thomas Anderton Wiseman, Jr.

Federal Judicial Service:
U. S. District Court, Middle District of Tennessee

Nominated by Jimmy Carter on August 1, 1978, to a seat vacated by Frank Gray, Jr.; Confirmed by the Senate on August 11,1978, and received commission on August 11, 1978. Served as chief judge, 1984-1991. Assumed senior status on November 3, 1995

Education:
Vanderbilt University, B.A., 1952
Vanderbilt University Law School, J.D., 1954
University of Virginia School of Law, LL.M., 1990

Professional Career:
U.S. Army, 1954-1956
Private practice, Tullahoma, Tennessee, 1956-1963
Private practice, Winchester, Tennessee, 1963-1971
Member, Tennessee House of Representatives, 1964-1968
Treasurer, State of Tennessee, 1971-1974
Private practice, Nashville, Tennessee, 1974-1978

Appendix E

Adjunct faculty, Vanderbilt University Law School, 1989-present
Special Master, Sixth Circuit Court of Appeals, 1992-1993

Race or Ethnicity: White

Gender: Male

Appendix E

FINANCIAL DISCLOSURE REPORT
Calendar Year 2003

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Wiseman, Jr., Thomas A

2. Court or Organization
Tennessee, Middle

3. Date of Report
04/16/2004

4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)
U.S. District Judge, Sr.Status

5. ReportType (check appropriate type) Annual

6. Reporting Period
01/01/2003 to 12/31/2003

7. Chambers or Office Address
777 U.S. Courthouse
801 Broadway
Nashville TN 37203

8. On the basis of the information contained in this Report and any modifications pertaining thereto, it

is, in my opinion, in compliance with applicable laws and regulations.

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

Position, Name of Organization/Entity

1. Board Member Sister Cities of Nashvil1e
2. Adjunct Professor of Law Vanderbilt University School of Law

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)
NONE (no reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Incom

DATE, SOURCE AND TYPE, GROSS INCOME

1. 2003 Vanderbilt University School of Law - Adjunct Prof 4,200.00
2. 2003 Tennessee Consolidated Retirement System

3,832.86

B. Spouse's Non-Investment Income - (If you were married during any portion of tile reporting year, please complete this section. (dollar amount not required except for honoraria)

DATE, SOURCE AND TYPE

1. 2003 Tennessee Consolidated Retirement System

IV. REIMBURSEMENTS - transportation, lodging, food, enterainment. (Includes those to spouse and dependent children. See pp. *2S-27* of instructions.)
NONE

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE - (No such reportable gifts.)

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

CREDITOR, DESCRIPTION, VALUE CODE
1. SunTrust Mortgage. Richmond. VA Mortgage on Rental Property #1, L
2. Pinnacle National Bank, Nashville, TN Mortgage on Investment Property #2, O
3. Pinnacle National Bank, Nashville, TN Unsecured Note, K

Appendix E

VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)
Place "(X)" afier each asset exempt from prior disclosure
B. Income during reporting period
(1) Amount Code (A-H)
(2) Type (eg. div, rent, or int)

C. Gross value at end of reporting period
(1) Value Code 2 (J-P)
(2) Value Method Code 3 (Q-W)

D. Transactions during reporting period
(1) Type (eg. buy, sell, merger, redemption)
If not exempt from disclosure
(2) Date Month- Day
(3) Value Code 2 (J-P)
(4) Gain Code 1 (A-
(5) Identity of buyer/seller (if private transaction)

1. Decberd Marble Granite None J W
2. Lot, Tim's Ford Lake, FranklinCo., TN None J W
3. Smallcap World Fund—American Funds A Dividend K T
4. IRA, ,A.G.Edwards (American Funds-SmallCap World and ICA) S None J T
5. A.G. Edwards A Dividend J T
6. Rental Property #1,Indian Shores, FL (1997 $172,000) E Rent N R

7. Harbor Funds-Capital Appreciation A Dividend J T
8. Legg Mason-Value Trust None K T
9. Centennial Money Market Acct (A.G. Edwards) A Interest J T
10. Orasure None K T
11. Bankatlantic Bancorp Inc. (BBX) A Dividend K T
12. Met Life A Dividend J T Buy 8/03 J
13. Callaway Golf A Dividend J T Buy 7/03 J
14. Jensen Fund None J T Buy 2/03 J
15. Levitt Corp Fla Spinoff BBX Bankatlantic Bancorp Inc. 12/3 None J T
16. ANDRX Group/Corp. None J T Buy 2/03 J
17. ANDRX Group/Corp. A Dividend Sold 5/03 J A
18. Geaentech Inc. None J T Buy 6702 J
19. Genentech Inc. C Dividend Sold 6/11 J A
20. Investment Property #2 Nashville, TN(2003 $515,000) None O R Buy 12/03 O

1. Income Gain Codes
(See Columns Bl and D4)
A= $1,000 or less
B= $1,001-$2,500
C= $2,501-$5,000
D= $5,001-$15,000
E= $15,001-$50,000
F = $50,001-$100,000
G= $100,001-$1,000,000
H1= $1,000,001-$5,000,000
H2= More than $5,000,000

2. Value Codes:
(See Columns C1 and D3)

J= $15,000 or less
K= $15,001-$50,000
L= $50,001-$100,000
M= $100,001-$250,000
N= $250,001-$500,000
O= $500,001-$1,000,000
P1= $1,000,001-$5,000,000
P2= $5,000,001-$25,000,000
P3= $25,000,000-$50,000,000
P4= More than $50,000,000

3. Value Method Codes
(See Column C2)
Q= Appraisal
R= Cost (Real Estate Only)
S= Assessment
T= Cash/Market
U= BookValue
V= Other
W= Estimated

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Appendix E

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 el seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS
Mail signed original and 3 additional copies to:
Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N .E.
Washington, D.C. 20544

Appendix E

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FOR CALENDAR YEAR 2004

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3. Date of Report
05/10/2005

4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)
U.S. District Judge, Sr.Status

5. ReportType (check appropriate type) Annual

6. Reporting Period
01/01/2004 to 12/31/2004

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NONE (no reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Incom

DATE, SOURCE AND TYPE, GROSS INCOME

1. 2004 Vanderbilt University School of Law - Adjunct Prof 4,200.00
2. 2004 Tennessee Consolidated Retirement System

3,915.12

B. Spouse's Non Investment Income - (If you were married during any portion of tile reporting year, please complete this section. (dollar amount not required except for honoraria)

DATE, SOURCE AND TYPE

1. 2004 Tennessee Consolidated Retirement System

IV. REIMBURSEMENTS - transportation, lodging, food, enteraimment. (Includes those to spouse and dependent children. See pp. 2S-27 of instructions.)
NONE

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

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(2) Type (eg. div, rent, or int)

C. Gross value at end of reporting period
(1) Value Code 2 (J-P)
(2) Value Method Code 3 (Q-W)

D. Transactions during reporting period
(1) Type (eg. buy, sell, merger, redemption)
If not exempt from disclosure
(2) Date Month- Day
(3) Value Code 2 (J-P)
(4) Gain Code 1 (A-
(5) Identity of buyer/seller (if private transaction)

1. Decherd Marble Granite None J W
2. Lot, Co., TN None J W Sold 05/04 J C Abbott
3. Smallcap World Fund-American Funds A Dividend K T
4. IRA, A.G. Edwards (American Funds-SmallCap World and ICA) S A Dividend J T
5. A.G. Edwards A Dividend J T
6. Rental Property #1, Indian Shores, FL (1997 E$172,000) Rent N R

7. Harbor Funds-Capital Appreciation A Dividend J T
8. Legg Mason-Value Trust None K T
9. Centennial Money Market Acct. (A.G. Edwards) A Interest J T
10. Orasure None K T Sold 1104 K C
II. Bankatlantic Bancorp Inc. (BBX) A Dividend K T Sold 3/04 J D
12. MetLife A Dividend J T Sold 2/04 J B
13. Callaway Golf A Dividend J T Sold 9/04 J --
14. Jensen Fund A Dividend J T
15. Levitt Corp Fla Spinoff BBX Bankatlantic Bancorp Inc. 12/3 None J T
16. Invesment Property #2 Nashville, TN (2003 $515,000) None O R
17. TIVO None J T Bought 01/04 J
18. TIVO None J T Sold 12104 J –
19. Eli Lily A Dividend J T Bought 03/04 J
20. Eli Lily A Dividend J T Bought 10/04 J
21. Mylan Laboratories A Dividend J T Bought 04/04 J
22. Dreyfus,Greater China Fund A Dividend J T Bought 03/04 J

1. Income Gain Codes
(See Columns Bl and D4)
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I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

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Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N .E.
Washington, D.C. 20544

Appendix E

VUCast: Vanderbilt University News Network

Mayor Bill Purcell honored as distinguished alumnus at Vanderbilt Law School; Thomas Wiseman Jr. cited for distinguished service

NASHVILLE. Tenn - Nashville Mayor Bill Purcell has been named the 2004 Distinguished Alumnus of the Vanderbilt University Law School.

Purcell, a 1979 graduate of the Law School, will receive the award during the school's annual Leadership Dinner April 3 at the Hermitage Hotel.

Criteria for the award include exemplary professional accomplishments and recognized leadership within one's field of endeavor. Recipients of the award must also demonstrate qualities that reflect the values of a Vanderbilt University Law School education, according to Kent D Syverud, dean and Garner Anthony Professor of Law.

"Bill Purcell has excelled as a state legislator, public policy expert, public defender and public servant," Syverud said "He has distinguished himself as mayor by squarely facing the toughest issues of metropolitan government, including schools. taxes, development and neighborhoods. Through inclusive processes, he stewards the community lo creative, long-term solutions that improve Nashville as a place to work and live. He

models all the skills of outstanding lawyers, and the Vanderbilt Law School is particularly proud to honor our alumnus Mayor Purcell for his extraordinary contributions to public service and to Nashville."

On being named Distinguished Alumnus of the Year, Purcell said, 'Vanderbilt Law School brought me to Nashville and gave me the start in my legal career and interests in protecting our children. It goes without saying that this recognition means a Great deal for me because of the role this law school, its faculty and alumni play in my life every day."

Purcell served 10years in the Tennessee General Assembly, six as House majority leader, before becoming director of the Vanderbilt Institute for Public Policy Studies' Child and Family Policy Center in 1996. He was elected mayor of the Metropolitan Government of Nashville and Davidson County in 1999 and reelected in 2003. Purcell is a trustee and member of the executive committee of the US Conference of Mayors.

The Distinguished Alumnus Award was established in 1988. Previous recipients have included George Cates Jr., Pauline Gore, James Sasser, Gilbert Merritt Jr., Richard Sinkfield, James Cheek III, Tone Grant, Fred Graham, Douglas Henry, Hugh Morgan, James Neal, Lucius Burch Jr, Fred Thompson, Aubrey Harwell, and Wayne S Hyatt.

Appendix E

Also on April 3,Judge Thomas A Wiseman Jr., senior US district judge for the Middle District of Tennessee, will be given the Law School's Distinguished Service Award.

Wiseman, a 1952 graduate of Vanderbilt University who earned his law degree from Vanderbilt in 1954, was appointed to the bench by President Carter in 1978. He served as chief judge from 1984 to 1991 and took senior status in 1995. He served in the Tennessee House of Representatives from 1965 to 1958 and was state treasurer from 1971 through 1974. He is an adjunct faculty member at Vanderbilt Law School and served on the school's Alumni Board from 1991 to 1994.

"Judge Wiseman has worked with Vanderbilt law students and faculty for decades, inside the classroom and courtroom and in the community," Syverud said. "A beloved teacher of trial advocacy and evidence, he has trained countless Vanderbilt law students in his classes and his chambers. His commitment to quality at the Law School and in his students has made Vanderbilt Law School a much better place and, therefore, amply merits his selection as recipient of the 2004 Distinguished Service Award," Syverud added.

On learning that he would receive the honor, Wiseman said, 'The education I received and the friends I made at Vanderbilt Law School have been largely responsible for any success I have achieved. I am grateful to Vanderbilt for this award and for the

opportunity to give back to the institution that has meant so much to me."

The Distinguished Service Award was first presented in 1987 when the dean recognized the former presidents of the Law Alumni Association and Dean's Council. Recipients have included William McDonnell, Mrs Cecil Sims, John Beasley II, Paul Hartman, Stephen Potts, Gamer Anthony, Mary Moody Wade, Henry Bushkin, Robert Brundige, Edward Hardin, Wayne Hyatt, David Partlett, Don Welch, Kay Simmons, Richard Aldrich, Joe Wyatt, JoeMcCarty, Tom McCoy, Pauline Aranas and Ted LaRoche.

For more information about Vanderbilt, please visit the News Service homepage at www.vanderbilt.edu/News. More information on the Law School can be found at www.vanderbilt.edu/law.

Media contact: Susanne Hicks. (615) 322-NEWS
susanne.hicks@vanderbilt.edu

Appendix E

Judge Thomas A. Wiseman Jr.
Significant Sig
Vanderbilt, '52

Judge Thomas A. Wiseman Jr., senior U.S. district judge for the Middle District of Tennessee, was given the Law School's Distinguished Service Award.

Wiseman, a 1952 graduate of Vanderbilt University who earned his law degree from Vanderbilt in 1954, was appointed to the bench by President Carter in 1978. He served as chief judge from 1984 to 1991 and took senior status in 1995. He served in the Tennessee House of Representatives from 1965 to 1968 and was state treasurer from 1971 through 1974. He is an adjunct faculty member at Vanderbilt Law School and served on the school's Alumni Board from 1991 to 1994.

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Vanderbilt University Law School

Home>Faculty>Affiliated Faculty>Thomas A. Wiseman III

Thomas A. Wiseman III

Partner, Gideon & Wiseman
Adjunct Professor of Law
J.D. Vanderbilt University Law School
B.A. Washington & Lee University

Thomas A. Wiseman III is a partner in the law firm of Gideon &Wiseman, which he cofounded, where he specializes in litigation.

He is a Fellow in the American College of Trial Lawyers, past president of the Nashville Bar Association and Tennessee Chapter of the American Board of Trial Advocates, and certified as a civil and medical malpractice trial specialist.

At Vanderbilt, Professor Wiseman teaches Trial Advocacy.

Appendix E

Gideon & Wiseman PLC
Attorneys at Law

Attorneys
Thomas A. Wiseman III

Admitted to bar: 1982, Kentucky; 1985, Tennessee.

Education: Washington & Lee University (B.A., 1979); Vanderbilt University (J.D., 1982). Fellow, American College of Trial Lawyers; Recipient, The Law Review Note Award. Member and Executive Student Writing Editor, Vanderbilt Law Review, 1981-1982.

Author: Note, 'Federal Rule of Evidence 803 (3) and the Criminal Defendant: The Limits of the Hillmon Doctrine,' 35 Vand. L. Rev. 659, 1982. Co-Author: 'First-Party Bad Faith: Common Law Remedies and a Proposed Legislative Solution,' 72 Ky. L. Rev. 141, 1983-1984.

Adjunct Faculty, Vanderbilt University Law School Trial Advocacy. Listed in Best Lawyers of America.

Memberships: Nashville (Member and President, 2001), Kentucky, Tennessee and American Bar Associations; Tennessee and Nashville Bar Foundations; Harry Phillips American Inn of Court; American Board of Trial Advocates (President, Tennessee Chapter, 2005). (Certified Civil Trial and

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Medical Malpractice Specialist, Tennessee Commission on Continuing Legal Education and Specialization). Practice Areas: Civil Litigation; Professional Liability.

Appendix E

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Law Firm in Nashville, Tennessee

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Location
1100 Noel Place
200 Fourth Avenue, North, Nashville, Tennessee 37219-2144, (Davidson Co.)
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(Main Office)

Gideon &Wiseman PLC practices in the following areas of law:
General Civil Trial Practice in State and Federal Courts, including Insurance, Insurance Defense, Regulatory, Health Care Administrative Litigation, Products Liability, Medical and Hospital Malpractice Litigation, Employment Law, Personal Injury, Automobile Accidents and Injuries, Wrongful Death, Workers' Compensation and General Business Litigation.

Year Established: 1992

Firm Profile:
GIDEON &WISEMAN PLC was formed in 1992 by C.J. Gideon, Jr., Thomas A. Wiseman in and Gail Vaughn Ashworth. Partners in the firm have extensive civil litigation experience in State and Federal Courts, Administrative Law tribunals, and before Regulatory agencies. The firm has substantial medical and hospital malpractice defense, product liability, insurance defense, personal injury and health care administrative practices.

Firm Size: 15

Representative Clients:
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Livingston Regional Hospital; Management Corporation of America; McKenzie Regional Hospital; McNairy Regional Hospital; Medical Assurance; Meharry Medical College; MHM Services, Inc.; Mid-Tenn. Ford Truck Sales, Inc.; Parkway Regional Hospital; Proclaim America, Inc.; Regional Hospital of Jackson; River Park Hospital; Safeco Insurance Companies of America; Scott County Hospital; Skyline Medical Center; Smith &Nephew-Richards, Inc.; Southern Hills Medical Center; Southern Tennessee Medical Center; State Volunteer Mutual Insurance Co.; Stone Crest Medical Center; Summit Medical Center, Tennessee Health Management, Inc.; The Doctors Company, Travelers; Trinity Hospital; Vanderbilt University Medical Center; Volunteer General Hospital; White County Community Hospital.

Office Hours:
Monday: 08:00 AM- 05:00 PM
Tuesday: 08:00 AM- 05:00 PM
Wednesday: 08:00 AM - 05:00 PM
Thursday: 08:00 AM- 05:00 PM
Friday: 08:00 AM- 05:00 PM

MEMBERS

C.J. Gideon. Jr. (Member) born Wichita, Kansas, October 27, 1953; admitted to bar, 1978, Tennessee; 1989, U.S. Supreme Court; 1990, U.S. Claims Court. *Education:* Duke University (B.A., magna cum laude, 1975); Vanderbilt University (J.D., 1978). Listed in Best Lawyers in America, 1991—.Author:

Article, "The Countersuit in Medical Malpractice Litigation," The Journal of the Tennessee Medical Association, Vol. 71, December, 1978. Adjunct Faculty, Vanderbilt University Law School Trial Advocacy. *Member:* Nashville and Tennessee Bar Associations; Harry Phillips American Inn of Court. *Practice Areas:* Medical Malpractice; Hospital Negligence; Health Care Administrative Litigation; Product Liability; Business Litigation. Email: C. J. Gideon, Jr.

Thomas A. Wiseman *III* (Member) born Tullahoma, Tennessee, October 25, 1957; admitted to bar, 1982, Kentucky. 1985, Tennessee. *Education:* Washington&Lee University (BA., 1979); Vanderbilt University (J.D. 1982). Recipient, The Law Review Note Award. Member and Executive Student Writing Editor, Vanderbilt Law Review, 1981-1982. Author. Note, "Federal Rule of Evidence 803 (3)and the Criminal Defendant: The Limits of the Hillmon Doctrine," 35 Vand. L.Rev.659,1982. Co-Author: "First-Party Bad Faith: Common Law Remedies and a Proposed Legislative Solution," 72 Ky. L. Rev. 141,1983-1984. Adjunct Faculty, Vanderbilt University Law School Trial Advocacy. Listed in Best Lawyers of America. *Member:* Nashville (Member and President 2001), Kentucky, Tennessee and American Bar Associations; Tennessee and Nashville Bar Foundations; Harry Phillips American Inn of Court; American Board of Trial Advocates (President, Tennessee Chapter, 2005). Fellow, American College of Trial Lawyers, 2007—. (Certified Civil Trial and Medical Malpractice

Specialist, Tennessee Commission on Continuing Legal Education and Specialization). *Practice Areas:* Civil Litigation; Professional Liability Health Care Litigation; Medical Malpractice. Email: Thomas A. Wiseman III

Gail Vaughn Ashworth (Member) born Opelika, Alabama, March15, 1956; admitted to bar, 1983, Tennessee and U.S. District Court, Middle District of Tennessee; 1998, U.S. Supreme Court. *Education:* Tennessee Technological University (B.S.. summa cum laude, 1977;MA., 1979); Vanderbilt University (J.D., 1983). Alpha Lambda Delta; Kappa Delta Pi; Sigma Nu Phi. Member, Harry Phillips American Inn of Court, 1990-1992.Listedin Best Lawyers in America, 1995—. Member, Medical Ethics Committee, Centennial Medical Center. Rule 31 Certified Mediator. *Member:* Nashville (Board of Directors, 1993-1997; President, 1997), Tennessee (Board of Governors, 1996-1997,1999—; General Counsel, 1999-2007; Vice President, 2007; Executive Council Coordinator, Secretary, 1988-1990; Young Lawyers Division, 1990-1992; President, 1996, Fellows of the Young Lawyers Division) and American(House of Delegates, 2000-2006; District Representative,1989-1991, Assistant Executive Council Coordinator, 1990 and Meetings Coordinator, 1991, Young Lawyer Division) Bar Associations; Lawyers Association For Women (Marion Griffin Chapter); Tennessee Lawyers Association for Women Bar Associations; Tennessee Justice Center, Inc.,(Member, Board of Directors, 1999—; Chair, 2006—); Chair, Tennessee Registry

of Election Finance, 1996. Fellow. Tennessee Bar Foundation; Nashville Bar Foundation. *Practice Areas:* Personal Injury Administrative Law; Insurance Law; Employment Law; HealthCare Law; Products Liability; Medical Ethics; Mediation. Email: Gail Vaughn Ashworth

Bryan Essary (Member) born Tuscaloosa, Alabama, March31,1963; admitted to bar, 1990, Georgia and Tennessee; 1998, U.S. Supreme Court. Education: University of Alabama (BA.. 1987); Cumberland School of Law of Samford University(J.D., magna cum laude, 1990). Phi Kappa Phi; Curia Honoris. Recipient, American Jurisprudence Awards in Federal Income Tax. Bankruptcy and Commercial Transactions II. Member 1988-1989 and Managing Editor 1989-1990, Cumberland Law Review. Co-Author. "The Treatment of Attorney's Fee Enhancements in Alabama and the Eleventh Circuit: Justice! the Law!: My Ducats and My Daughter!" 20 Cumberland Law Review 769 (1990). Cordell Hull Research and Writing Teaching Fellow, 1988-1989. *Member:* Nashville, Tennessee, and American Bar Associations; State Bar of Georgia. *Practice Areas:* Insurance; Products Liability Medical Malpractice; Hospital Negligence; Personal Injury; Business Litigation; Workers' Compensation. Email: Bryan Essary

Dixie W. Cooper (Member) born Grove Hill, Alabama, February 17,1963; admitted to bar. 1987, Alabama; 1988, Texas; 1990, U.S. District Court, Southern District of Texas; 1991, South Carolina;

1994, Tennessee; 1995, U.S. District Court, Middle, Eastern and Western Districts of Tennessee. *Education:* University of South Alabama (B.A., 1984); University of Alabama (J.D., 1987). Pi Sigma Alpha; Omicron Delta Kappa. Member, Trial Advocacy Board. *Member:* Nashville and Tennessee Bar Associations; State Bar of Texas; Alabama State Bar; Tennessee Lawyers Association for Women; Lawyers Association for Women; American Board of Trial Advocates. *Practice Areas:* Medical Malpractice; Hospital Negligence; Personal Injury Litigation. Email: Dixie W. Cooper

Margaret J. Moore (Member) born Opelika. Alabama, July 21, 1967; admitted to bar, 1995, Tennessee and U.S. District Court, Middle District of Tennessee. *Education:* University of the South (BA., cum laude, 1989); University of Tennessee (J.D., 1995). Former Member: Nashville Bar Association (Secretary, 2001); Tennessee Bar Association; Harry Phillips American Inn of Court. Practice Areas: Medical Malpractice; Hospital Litigation; Personal Injury Litigation. Email: Margaret J. Moore

Brian Cummings (Member) born Haddonfield, New Jersey January 11, 1973; admitted to bar, 1998, Tennessee; U.S. District Court. Middle, Eastern and Western Districts of Tennessee. *Education:* Rutgers University (B.A., with honors, 1995); Vanderbilt University (J.D., 1998). Member: Moot Court; Vanderbilt Bar Association Class Representative. *Member:* Tennessee Bar Association. *Practice Areas:* Medical Malpractice; Hospital Litigation; Products Liability, Personal Injury. Email: Brian Cummings

Appendix E

ASSOCIATES

Kimberlv Silvus (Associate) born Clarksville, Tennessee, December 7.1978; admitted to bar, 2005, Tennessee. *Education:* Austin Peay State University (BA., summa cum laude, 2001); University of Durham (MA., 2002); University of Georgia (J.D., 2005). Phi Kappa Phi; Omicron Delta Kappa; Order ofthe Barristers. Member: Moot Court Board; Harry Phillips American Inn of Court; Mock Trial Board. Member, Nashville Women's Political Caucus. *Member:* Nashville Bar Association. *Practice Areas:* Medical Malpractice; Hospital Negligence; Health Care Litigation; Nursing Home Litigation. Email: Kimberlv Silvus

Alan S. Bean (Associate) born Nashville, Tennessee. 1981; admitted to bar, 2007, Tennessee. *Education:* University of Mississippi (BA., Political Science, magna cum laude); Vanderbilt University Law School (J.D., 2007). Chief Justice, Moot Court Board, Vanderbilt University Law, 2006-2007. Finalist, Moot Court Competition, Fall 2005. Octofinalist. Mock Trial Competition, Spring 2005. Trial Advocacy Society, Spring 2005. Section Editor. Obiter Dictum. *Member:* Tennessee Bar Association. *Practice Areas:* Health Care; Medical Malpractice. Email: Alan S. Bean

Brian P. Manookian (Associate) born Tennessee; admitted to bar, 2007, Tennessee. *Education:* Lipscomb University (BA, magna cum laude, 2003); Vanderbilt University (J.D., 2007). Dean's List Recipient: Chancellor's Scholarship; Vanderbilt Law and Business Certificate, 2007. Editor, Vanderbilt Law Review, 2005-2007. Member, Vanderbilt Law School Advocacy Society, 2004-2007. Member: Nashville and Tennessee Bar Associations. *Practice Areas:* Hospital Law; Medical Malpractice.

Catherine M. Corless (Associate) born St. Louis, Missouri, April 27,1978; admitted to bar,2003, Tennessee. *Education:* University of Central Arkansas (B.S., 2000); Vanderbilt University (J.D., 2003). Scholastic Excellence, Professional Responsibility. President, 2002-2003, Treasurer, 2001-2002. Vanderbilt Trial Advocacy Society. *Member:* Tennessee Bar Association. *Practice Areas:* Medical Malpractice; Hospital Litigation. Email: Catherine M. Corless

Kelly R. Thomas (Associate) born Huntsville. Alabama, January 31,1978; admitted to bar, 2003, Tennessee; 2004, U.S. District Court, Eastern and Middle Districts of Tennessee. *Education:* Jacksonville State University (B.S., cum laude, 2000); University of Alabama (J.D., 2003). Editor-in Chief, Law and Psychology Review. Member: Tennessee Bar Association. *Practice Areas:* Medical Malpractice; Hospital Negligence; HealthCare Litigation; Nursing Home Litigation. Email: Kelly R. Thomas

Christopher J. Tardio (Associate) born Greenville, Kentucky May 23,1979;admitted to bar, 2004, Tennessee; 2005. U.S. District Court, Middle District of Tennessee; U.S. District Court, Eastern District of Tennessee. *Education:* University of Kentucky (B.A.. summa cum laude, with honors, 2001); Vanderbilt University (J.D., 2004). Dean's List Phi Alpha Delta. Legal Aid Society. Managing Editor, Journal of Entertainment Law and Practice. *Member:* Nashville, Tennessee and American (Member, Young Lawyers Division) Bar Associations. *Practice Areas:* Medical Malpractice; Hospital Litigation. Email: Christopher J. Tardio

Christopher A. Vrettos (Associate) born Toms River, New Jersey. September 5, 1977; admitted to bar, 2005, Tennessee; 2006, U.S. District Court, Eastern District of Tennessee. *Education:* Duke University (BA., 2000); Washington&Lee University School of Law (J.D., cum laude, 2005). Phi Delta Phi. Member, Harry Phillips American Inn of Court, 2006-2008. Black Lung Clinic, 2003-2005. Winner, Washington &Lee Client Counseling Competition, 2004. Moot Court Executive Board, 2004-2005. Member: Nashville and American Bar Associations. *Practice Areas:* Medical Malpractice; Hospital Litigation. Email: Christopher A. Vrettos

Carol E. Davis Crow (Associate) born Houston, Texas, February 21,1973;admitted to bar, 1998, Texas; 2006, Tennessee and U.S. District Court, Middle District of Tennessee. *Education:* University

of Texas at Austin (B.J., 1995); Texas Tech University (J.D., 1998). Member. Board of Barristers. 1997-1998. Member: State Bar of Texas; Tennessee Bar Association; Texas Young Lawyers Association. Practice Areas: Medical Malpractice Defense; Hospital Negligence. Email: Carol E. Davis Crow

Appendix E

2008 Founders Circle Dinner Attendees

L. Bruce Abies (JD '63) and Sandra S. Abies
Lawrence R. Ahern III (BA '69, JD '72) and Karen Cole Ahern
Patrick L. Alexander (BA 77, JD '80) and Mary Alexander (BA 77)
Paul Nii-Amar Amamoo (JD '07)
Robert E. Banta (JD 79) and Terry Currie Banta (BA 72, JD79)
George Barrett (JD '57)
John S. Beasley II (BA '52, JD '54)
Michael J. Beaudine (JD '88)
C. Dewees Berry IV (BA '73, JD '76) and Katherine Davis Berry
Steve Berson(JD'81)
Richard D. Bird (BA '54, JD '59) and Cherry C. Bird
Margaret Blair and Roger Conner
Andree Blumstein (JD '81) and James Blumstein
Alexander B. Buchanan(BA '75, JD '78) and Ann P. Buchanan
Thomas R. Buckner (JD '72)
G. Rhea Bucy (BA '70, JD '73) and Carole Stanford Bucy
Kathryn Carmody
Susan Curtis (JD'81)
Hon. Martha Craig Daughtrey (BA '64, JD '68)
Karl F. Dean (JD '81) and Anne Davis (JD '81)
M. Douglas Dunn (JD '70)
Mark E. Edwards(JD '75) and Deborah T. Edwards
Prof. Nita Farahany and Nicholas Rosenkranz

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Ronald I. Feldman(BA '69, JD 72) and Dana K. Feldman
William A. Fenwick (JD '67)
Douglas M. Fisher (BA '50, JD '52) and Julie Fisher
Prof. Brian Fitzpatrick and Heather Childs
Chris Fox (JD '05) and Elizabeth Fox (JD '05)
Kay Cooper Gabbert (JD '76) and Craig V. Gabbert Jr. (JD 76)
Tim Garrett (JD '86)
Frank M. Garrison, Jr. (BA '76, JD '79) and Amy Price Garrison
Joe V. W. Gaston (JD '64) and Kay B. Gaston
James Gibson (JD '09)
James C. Gooch (BA '65, LLB '67) and Jennie Smith
Robert C. Goodrich Jr. (JD '83)
John Joseph Gorman (JD '79)
Hal Hardin (JD '68)
David L. Heald (JD '69)
Angela Henderson
John Herman (JD'92)
Richard D. Holton(JD'80)
James R. Irving (JD '08)
William Hubbard (JD 71) and Beatrice Hubbard (JD 75)
Gordon James III (JD 72) and Loni James
Ruth E. Johnson (JD 75)
Victor S. Johnson III (JD 74) and Mary Leyden Johnson (BSN 72)
Elliott Warner Jones Sr. (BE '71, JD 75) and Marilyn Lee Jones (BA '80)
Prof. Sue Kay (JD 79) and Preston Stein
Prof. Nancy J. King and Timothy Babb

Appendix E

Richard F. LaRoche Jr. (JD 70) and Gloria Jane LaRoche (BA '67)
Dr. John Lea IV (BE 73, MD 77, MD '82) and Ellen Bradford Lea(BA 73, JD 76)
Prof. Terry Maroney
Alyne Queener Massey (BA '48)
Susan Kim Matlow (JD '91)
Henry C. McCall (BA '47, JD '50) and Sue McCall
Susan Emery McGannon (JD 76)
Betsy McIntyre (JD '02) and Rich McIntyre
Hon. Gilbert S. Merritt Jr. (JD '60) and Martha Ingram, BOT
Jim Miller (JD '64) and Karina Lichirie Miller
David Nelson (JD '59) and Bernice Nelson
Prof. Mike Newton
Prof. Lars Noah
William R. O'Bryan Jr. (JD 77) and Karen Sue O'Bryan
William P. Ortale (JD '55) and Jean H. Ortale
Larry Papel (JD '80) and Elizabeth Papel
Linda Parker (JD 79)
Lillian Quarles
Grace Renshaw
Rich Riebeling (JD *83)
John H. Roe Jr. (JD 72) and Jane Buchi Roe
John Rose (JD '93) and Grace Page
Dean Edward Rubin and Dr. Ilene N. Moore
James F. Sanders (BA '67, JD 70) and Cheryl Ann Sanders
Hon. Kent Sandidge III (BA '52, JD '56) and Dr. Paula Conaway Sandidge
Keith B. Simmons (JD 76) and Kay Snyder Simmons
L.D. Simmons (JD '84)

Wilson Sims (JD '48) and Linda Sims
M. Lee Smith (BA '64, LLB '67) and Marilyn Smith
Matt Sweeney (JD 76) and Judy Sweeney
James S. Tate Jr. (BA 76, JD '80) and Anne M. Tate
Overton Thompson (JD '84) and Robin Thompson
Scott Tift (JD'08)
Robert D. Tuke (JD 76) and Susan C. Tuke
Richard C. Unger Jr. (JD 77) and Shelton Sumner Unger
Frank Mitchell Walker Jr. (JD '82) and Julie Caldwell Walker
Prof. Don Welch Jr. (MA 75, Ph.D. 76) and Celeste Reed
Dudley West (JD '80)
Alyssa Wilcox and Michael D. Wilcox, Ph.D.
Ricky Wilkins (JD '90)
John P. Williams (JD 72)
Matt Wilson (BS '96, M.Ed. '00)
Justin P. Wilson (JD 70) and Dr. Barbara Engelhardt Wilson
Ashley Wiltshire (JD 72) and Prof. Susan Wiltshire
Hon. Thomas A. Wiseman, Jr. (BA '52, JD '54) and Emily M. Wiseman
Hon. J. Randall Wyatt (JD '66) and Kay Wyatt

Appendix E

The 2007 Annual Report of Donors

2008 Distinguished Alumnus James B. Miller, Jr., JD'64, and his wife, Karina Miller, PhD'73

Vanderbilt University Law School

Appendix E

2007 Annual Report of Donors

This report recognizes contributions made by Vanderbilt Law School's alumni and friends during the 2007 calendar year.

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One of the genuine pleasures of serving as dean of Vanderbilt Law School has been the opportunity to get to know and work closely with many of you, our supportive alumni. Since joining the law faculty in 2005, I've been grateful for your wise counsel, loyalty to your school, and your support of the law school's students, faculty, academic programs and other initiatives.

This special publication recognizes the many ways you support the Law School – as advisors on our National Council, as Class Representatives and Firm Representatives, as members of our adjunct faculty, by mentoring and employing our students, by forming an essential part of our institutional memory, and through your gifts.

I want to express my appreciation to all of you who remain such an important presence in the law school community. I believe we have been able to maintain a strong sense of community at Vanderbilt because we are engaged in meeting the same exciting challenge the law school faced when you arrived to start your 1L year: Offering a legal education of the highest caliber in a collegial atmosphere.

We will need your support more than ever to ontinue to achieve that goal in the next few years, as we strive to hold fast to our established and proven traditions while preparing our students to meet the

rapidly evolving challenges of legal practice in the 21st century.

Thank you for your loyalty and support.
Dean Edward L. Rubin

Appendix E

Banking on the Golden Rule

Fidelity Bank CEO and 2008 Distinguished Alumnus Jim Miller '64 learned early on to "give back to your community as much as you get."
By Grace Renshaw

Sseveral years ago, former Russian Premier Vladimir Putin asked Jim Miller to start a bank in St. Petersburg.

Putin's request wasn't completely off- the-wall. Although Miller was visiting St. Petersburg, Russia, as part of a delegation from Atlanta-based Georgia Baptist Health Care System, he had spent much of his career building and managing Atlanta-based Fidelity Bank, now the largest community bank operating inside Atlanta's perimeter. In addition, he and his wife, Karina, had lived in Berlin for several years during the 1970s, during which Miller, who speaks fluent German, served as president of two companies, Agcka Wohnungsbau GmbH, which managed apartments, and Mudrack Eisfabrik, a cold storage company. Miller understood more about doing business in a foreign country than most American businessmen, and he had actually landed the job in Berlin thanks in part to his wife's family connections. Jim had met Karina at Vanderbilt, where she was earning her Ph.D. in literature. Her mother had emigrated to the U.S. from Germany in the 1930s, and she had family ties in Berlin. "Mr. Putin obviously knew who I was and

that I spoke German," he recalls. "I told him, 'This is an interesting opportunity. I'll think it over.'"

But Miller knew immediately that he would politely decline Putin's invitation. As president of a successful community bank, he was acutely aware that an intimate understanding of the local culture and business environment was essential to a bank's long-term success, and he knew very little about St. Petersburg. He also knew that banks, which form the bedrock of capitalist economies, represented a tremendous learning curve for Russians emerging from a communist economic system. "The banking business was just beginning in Russia, and most Russians had absolutely no idea how a bank worked," he said. "Anyone starting a bank there faced the daunting task of introducing the banking business to customers who didn't know the first thing about banks."

There was also the issue of rampant corruption. Miller, who believes so strongly in the principle of the Golden Rule that treating "customers, employees, community and shareholders according to the Golden Rule" is posted on Fidelity Bank's web site as part of the bank's mission, knew that doing business in Russia would involve compromises he wasn't willing to make. "I joked later that if I'd accepted Mr. Putin's offer, today I'd either be very rich or very dead," he says drily.

By building Fidelity Bank into a trusted local institution with 24 branches throughout North

Georgia, Miller has achieved a goal to make a lasting and positive investment in his community that he tracks back to his childhood in Tallahassee, Florida. "Tallahassee was a small town in those days," Miller recalls. "My parents were very keen on education, and I was taught early on that you gave back to the community as much as you got from it."

When Miller entered the banking business, he chose Atlanta in part because Karina had grown up and had family there, and "because it had a small-town feel – the same kind of atmosphere I'd grown up in." He liked the fact that running a community bank allowed him to invest in local businesses and offer mortgages to people buying homes in the community. "Big banks have their place," he says, "but the fact is that relationships do matter. That's why community banks have an important role to play – you still have the discretion to lend money to people because you know they're going to pay you back. People's character still counts."

Although Miller admits he was a less than diligent law student, he credits his legal training with enabling him to make better business decisions. "I don't see how anybody can run a substantial business without a law degree," he says flatly. "What you learn when you study law is to pay attention to detail, and what you learn in banking is that entrepreneurs so often overlook detail."

Miller entered the banking business by acquiring stock in Fidelity Southern Corp. over a

period of years. "It seems like it's taken forever, and it's been just a step at a time, but we're really poised for growth now," he says. "And it's been a great ride. I've just enjoyed so much the building of the business. The hardest thing I ever had to do was move from the banking floor to the executive floor, away from the customers and the staff."

Miller has been a consistent and generous supporter of the law school and of Vanderbilt University – where his wife earned her Ph.D. and his daughter, Lilly, earned her undergraduate degree – in part because of his grateful memories of assistance from Dean John Wade, who exerted a positive influence as a teacher – "his classes were fun and really interesting," Miller recalls – and as a mentor. "He was personally kind to me, which I really appreciated," he says. "On one occasion, he just gave me some cash to help me stay in school. An alumnus had given him a contribution to use as he wished, and he used it to help me out."

After the Millers settled in Atlanta. Jim quickly became active in a number of community organizations - "You name it, and I was active in it, "he says - and he and Karina have also maintained strong ties to Vanderbilt. "Because of my civic involvement, I've had some tremendously rewarding experiences," he says."My philosophv is the same for my business and my personal life: If you're not growing or improving, you're dying. I believe you should be as generous as you can be, and it gets easier as you get older. When I look back, I've realized Vanderbilt Law School was a

transformational experience for me, and I can hardly do enough for the law school."

Other than generous support of Vanderbilt University, Vanderbilt Law School, and several community organizations and charities, the Millers'only extravagance, according to Jim, is travel. In addition to traveling with Karina, he sometimes travels with an old friend, Clyde Shepherd. "Clyde is now in his 90s, and we went to Saudi .Arabia recently, which was a fascinating trip," Miller says. "I still vividly remember the first time I met Clyde. I had started buying shares of Fidelity, and the man who was then president thought he ought to introduce me to the board, and he did. Clyde was on the board, and he said, 'So what?'" Miller laughed out loud, and the two men have been fast friends ever since.

"The truth is, life is hard," Miller says. "You have to learn to deal with adversity, and laughter is as good a way as any to do that."

THE FOUNDERS CIRCLE

LEVELS OF GIVING

Cornelius Vanderbilt
$25,000 and above annually
Chancellor's Council
$10,000 to $24,999 annually
Dean's List
$5,000 to $9,999 annually
Magistrates
$2,500 to $4,999 annually
Barristers
$1,000 to $2,499 annually

Cornelius Vanderbilt Level
Gifts of $25,000 or more

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William H. Hess, JD'90, and Jodi Hess
Wayne S. Hyatt, BA'65, JD'68
Sydney F. Keeble, BA'49, JD'51*
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Appendix E

Sally Baum Nordlund, BSN'74

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Michael B. Hammond, JD'75, and
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John C. Pracht Jr., BA'51, LLB'51
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Carlton B.Tarkington, BA'59, JD'63

Dean's List
Gifts of $5,000 - $9,999

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James R. Browne, JD'81
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Harrison Joseph Frahn IV, JD'96
Frank M. Garrison Jr., BA'76, JD'79, and Amy Price Garrison, BA'79
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Carolyn N. Hamby
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Gerald J. Pels, JD'83
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J. Hobson Presley Jr., JD'75
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N. Clay Robbins, JD'82
Edward L. Rubin and Ilene N. Moore
David H. Simmons, JD'77

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Barbara Engelhardt Wilson
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Wagner Arterberry, BA'73
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Sallie W. Bailey
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Terry Currie Banta, BA'72, JD'79
James H. Bloem, JD'75
Thomas G. Bost, JD'67, and
Sheila Bost, BS'67, MS'69
Thomas R. Buckner, JD'72, and
Karen W. Buckner, BA'71
Virginia Pipes Butler, BA'74, JD'77
J. Michael Campbell, BE'65, JD'68
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James C. Cifelli, JD'76
John M. Colvin Jr., BA'55, MS'58, JD'65
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Delta Anne Davis, JD'81
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A. Darby Dickerson, JD'88
Alan W. Duncan, JD'79, and
Pam DeAngelis Duncan

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Linda A. Friedman, JD'76
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Jennie Smith
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James Byron Morris
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Thomas W. Moore, JD'67
Clay Wetherill Moorhead, JD'06
R. Anthony Orsbon, JD'72
Michael C. Pescatello, JD'69
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Aleta Arthur Trauger, MAT'72, JD'76, and
Byron R.Trauger
Stephen Michael Vinsavich, JD'73
Lawrence Allen Vranka Jr., JD'89

Appendix E

James Timothy White, JD'64

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Gifts of $1,000 - $2,499

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Martha *Indicates Estate gift Jo Berry, BSN'72
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David Allen Beyer, JD'82
Jo Ann Biggs, JD'83
Richard D. Bird, BA'54, JD'59, and
Cherry C. Bird
Philip H. Blackburn, JD'70

Jean Coleman Blackerby, JD'03
John Wilfred Bonds Jr., JD'73
Andrew Bor, JD'80
C. Dent Bostick
Leilani Boulware, JD'92, and
Dwaine L. Anderson
Cecil D. Branstetter, JD'49
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Samuel G. Bridge Jr., JD'66, and
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Karen H. Briggs
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Laura Rakow Brothers, JD'96
Martin S. Brown Jr., JD'92
T. Michael Brown, JD'89
Robert W. Brundige Jr., JD'69
John S. Bryant, JD'73
David C. Buck, JD'94
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G. Rhea Bucy, BA'70, JD'73
John M. Burtis, JD'70
Nancy Wolf Calomiris, JD'83
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MSN'87, and
William F. Carpenter, BA'76, JD'82
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Catherine Gray Clark, JD'88
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Peter Francis Clark, JD'80

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Fred Collins, JD'69
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Catherine K. Cooper, JD'49
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Lucy Cox, BA'75
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Meredith Brinegar Cross, JD'82
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Kent Edwin Daiber, JD'80, and
Elizabeth A. Daiber, BA'80
John Page Davidson, BA'82
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Rebecca J. Davis
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John C. Fennebresque, JD'73
Paula Maria Fernandez, JD'94
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Sara J. Finley, JD'85
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J. Stephen Gilbert, JD'90
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Lucia Flowers Gilliland, BA'59
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Sharon Pepper Goldstein, BA'74

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Richard Riley Hays, JD'86
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Karl Arthur Hochkammer, JD'95
Philip E. Holladay, JD'84, and
Melinda Cooper Holladay, JD'86
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Karin Bethany Hoppmann, JD'97
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Paul A. Howell Jr., JD'75
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Anne P. LaDriere
Howard Henry Lamar III, BA'83, JD'89
Stephen Matthew LaMastra, JD'90, and
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Our thanks to these alumni and students, who hosted receptions for Vanderbilt Law alumni and friends.

Appendix E

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Locke Lord Bissell & Liddell

September 2007 – Houston
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Sutherland Asbill & Brennan

November 2007 – Chicago
Andrew Kaufman '74
Kirkland & Ellis
Gary Hirschberg '06
Goldman Sachs
Don Mizerk '88
Winston & Strawn

November 2007 – Murfreesboro
Matt B. Murfree '69 and
M. Bricke Murfree '03
Murfree & Murfree
February 2008 – Memphis
C. Thomas Cates '65 and
Taylor Cates '99
Burch Porter & Johnson

April 2008 – Atlanta
Mark Feidler '81

April 2008 - Birmingham
Warren B. Lightfoot '91

Appendix E

Maynard Cooper & Gale

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William H. Lassiter Jr., BA'60, LLB'63
Ellen Bradford Lea, BA'73, JD'76
Martha Reddy Lehman, JD'87
Stephen Weldon Lemon, JD'87
M. Richard Lewis Jr., BA'73, JD'76
Warren Bricken Lightfoot Jr., JD'91
James H. Lokey Jr., JD'78
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Guy Lyman and Marjory M. Lyman
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Jodi Lower Mahon, BS'88
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Robert Earl Mansbach Jr., JD'82
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Paul A. Matthews, JD'77
Michael Owen McCarthy III, JD'91
Anthony J. McFarland, JD'81
Susan Emery McGannon, JD'76
Elizabeth McIntyre, JD'02
Michael Dale McKibben, JD'85, and
Laura Harrell McKibben
Marcia Mallory McMurray, JD'88

Robert L. McMurray, LLB'54
Wanda S. McNeil, JD'76
Holland Nimmons McTyeire V, BA'81, JD'84
Gilbert S. Merritt Jr., JD'60
Andrew Hays Meyer, BA'85, JD'89
Dale T. Miller, JD'86
James B. Miller Jr., JD'64, and
Karina Miller, Ph.D.'73
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William P. Ortale, LLB'55
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Laurence Mitchell Papel, JD'80
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Michael Patrick Peck, JD'81, MBA'81
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Stephen Peters, JD'76
John W. Potter, JD'72

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Tracy A. Powell, JD'89
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Meg Gallmeyer Anderson, JD'98, and

Knight Anderson
Christine Holland Anthony, JD'06
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Ginger Leigh Appleberry, JD'03
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Anita Adobea Arkutu, JD'03, and
Richard Spencer Arkutu
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Victoria Catherine Mitchell, JD'01
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Albert Bates Jr. IV, JD'87, MBA'87
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Mary Helen Beard, JD'00
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R. Luther Beauchamp, JD'68
Clarance Evans Beaver, JD'49
Scott E. Becker, JD'73
Lewis D. Beckwith, JD'73
Patricia Michelle Bedoya, JD'04
Fred W. Beesley Jr., BA'58, JD'82
John C. Beiter, JD'87

Amy W. Beizer, JD'00
Cara Tuttle Bell, JD'03, and
Lance S. Bell, JD'03
Franklin Leaston Bell, JD'00
Robert Belton
Ryan William Belville, JD'02
Saul C. Belz, JD'67
Albert Francis Bender III, BA'83, JD'86
Robert S. Benham, BA'61, JD'63
Aaron Benner, MBA'96, ME'96, and
Tracy Malcolm Benner, JD'97
James Forrest Bennett, JD'95
Rankin P. Bennett, JD'69
Elizabeth Carlin Benton, JD'91
Heather Andrysiak Benveniste, JD'99
Barri E. Bernstein, JD'85
Douglas Berry, JD'79
Turney P. Berry, JD'86
Cathryn Anne Berryman, JD'91
Jennifer Robin Berson, JD'05
George Barry Bertram, BA'57, JD'59
Deborah Hill Biggers, JD'78
W. Harold Bigham, JD'60
E.Thomas Bishop, JD'76
David K. Bissinger, JD'93
William W. Bivins, JD'58
R.Thomas Blackburn Jr., JD'71
Michael Joseph Blade, JD'96, MBA'96
Ben Wayne Blanton, JD'82
Frank S. Bloch
William A. Blue Jr., JD'83
John Maury Bodley, BA'49, JD'51
Richard J. Bodorff, JD'74

Appendix E

R. Dale Bohannon, JD'76
JoAnne Marie Bonacci, JD'90
Charles Robert Bone, JD'00

Honing in on What's Important

Rana DiOrio's scholarship promotes her belief that people in any profession can benefit from a legal education.

In the mid-1990s, Rana DiOrio, '91, was a self-described "deal jock" at Wilson Sonsini in Palo Alto, California, where she specialized in helping investors take technology companies public, when she joked her way into a job as an investment banker. "One of my clients at Alex Brown literally needed to be in three different places on one day," she says. "I looked up at him and said, 'You know, you really ought to hire me to do your execution so that you can concentrate on negotiating deals.' He called me the next day, and said, 'I know you were jesting, but I think that's a great idea.'"

At that time, it was "unheard of" for an attorney who lacked an MBA to become a banker, and Alex Brown – which underwrote the first initial public offering in America in 1808 – was steeped in tradition. DiOrio recalls being interviewed by a bevy of Alex. Brown executives at all ranks before the firm offered her a job as an associate. "The offer came on my 30th birthday," she says. "As a lawyer, I had been papering the transactions bankers were negotiating, and it was extremely exciting to move

on to actually negotiating the business deals. My legal education and experience were a tremendous asset because lawyers are trained to hone in on what's important."

Today, DiOrio is one of three partners in Forerunner Ventures, a venture capital firm that focuses on branded consumer businesses that embrace socially responsible business practices. Over the course of her career, she has helped raise over $4 billion in public equity and debt and $400 million in private equity, and completed advisory transactions representing nearly $3 billion in aggregate transaction value. "My domain at Forerunner is oversight of legal responsibilities and exit strategies as well as oversight of technology utilization and best practices in and among our portfolio companies," she says. "My 17 years of experience as a lawyer and an investment banker has been ideal preparation for what we're doing now."

DiOrio has funded a Vanderbilt scholarship earmarked specifically for 3Ls considering career paths other than private legal practice because of her steadfast belief that a legal education is an excellent preparation for any career. She also serves on the law school's National Council. "It's a very prestigious and elite group of leaders, and I'm humbled to be among them," she says. "And I'm extremely grateful to Vanderbilt and to my professors for shaping me into the professional I am today."

Bruce Ira Booken, JD'77, and
Barbara B. Booken, MS'77
Fred W Bopp III, JD'89
J. L. Boren Jr., BA'50, JD'53, and
Carolyn Prewitt Boren
Lisa Kay McClelland Borgeson, JD'92
Janice Hesser Bossing, JD'86
Garth Ernest Bossow, JD'99, MBA'99
James H. Boswell, JD'49
Elizabeth Dash Bottman, JD'81, and
Jeffrey Sandsmark Bottman
Carol Ewald Bowen, JD'84
Lindsey Elisa Bowen, JD'07
John Maurice Bowler, JD'91
Bowlman T. Bowles Jr., JD'65
Emily Hatch Bowman, JD'00
Martha Lucile Boyd, BA'90, JD'99
Edward Patrick Boyle, JD'93
Jean Marie Brabeck, JD'81
John Joseph Bradford, JD'01
Beth Weems Bradley, BA'84, JD'87
Cynthia Antonak Brady, JD'86
Hutton S. Brandon, JD'60
Thomas J. Brandt, JD'77, and
Susan Jones Brandt, JD'77
Jeanna Ann Brannon, JD'86
C. Dewey Branstetter Jr., BA'78, JD'81
Reginald Brantley, JD'79
Benjamin E. Bratman, JD'93
Margaret Denton Khayat Bratt, JD'00
Eric D. Braverman, JD'90
Michael B. Bressman, BA'89, and

Lisa Schultz Bressman
Chad Otto Breunig, JD'97
Laura Way Brewer, JD'90
Mary Barrett Brewer, JD'86
Pat B. Brian, JD'65
S. Powell Bridges, JD'57
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Bobette Brizendine
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Herbert C. Broadfoot II, JD'69
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Michelle Nohealani Brooks, JD'07
William H. Brooks, JD'90
Brian Randall Browder, JD'94
B. Mackay Brown, JD'70
Joe B. Brown, BA'62, JD'65
LaToya Shaunté Brown, JD'07
Lauren G. Brown, JD'04
Lonnie Theodore Brown Jr., JD'89, and
Kimberly R. Brown
Raleigh H. Brown
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Jon W. Bruce and Barbara J. Bruce
Jon P. Bruinooge, JD'70
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William H. Bryson, JD'62
Bruce Everett Buchanan, JD'82

Ryan K. Buchanan, JD'05
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Richard A. Buerger, JD'73
Matthew Ryan Buesching, BA'98, JD'01
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Lowell G. Burger, LLB'55
John Edward Burgess, JD'95
Robert Seton Burke, JD'51
Bob Burkhalter, BA'50, MA'51
Stayce Marie Burkhart, JD'06
Henry G. Burnett, JD'89
Matthew Robert Burnstein, BA'93, JD'96
Ronald J. Busch, LLB'64
Lucy Olwell Buschmann
Jonathan E. Bush, BA'95, JD'00, and
Ashley A. Bush, BA'95
Roderick D. Bush and Rita J. Bush
John Van Butcher, JD'87
Walter R. Butler III, JD'73

Surrounded by Friends

Milbank Tweed first-year associate Masa Yamamoto '07 endows a prize for the Journal of Transnational Law.

By Grace Renshaw

Keio University graduate Masa Yamamoto was working as an in-house legal counsel for a Japanese utility company when he decided to study law in the United States. "My company was involved in international power and water projects, and in

one project, American lawyers dominated the negotiation process," he recalls. "There were very few things I could do as a lawyer educated in Japan. So I decided to pursue a J.D. degree in the United States to know the 'enemies.' Instead, I found myself surrounded by friends at Vanderbilt."

Yamamoto's success as a Vanderbilt student who could write extremely well in English was confirmed when he garnered a coveted editorial position with Vanderbilt's *Journal of Transnational Law,* where he ultimately received the Second-Year Editor Award, the G. Scott Briggs Transnational Legal Studies Award and the Grace Wilson Sims Award for student writing in transnational law. Now a first-year associate at Milbank Tweed Hadley & McCloy in New York, Yamamoto has contributed a generous $25,000 to the law school to endow the second-year editor award with a cash prize in perpetuity in memory of his late mother, Michiko Yamamoto.

"Through my work as an editor of the *Journal of Transnational Law,* I devoted myself to the Journal, worked with great colleagues, and learned a significant amount," he says. "I'm so proud of having been a part of the Journal, and I just wanted to show my appreciation for what Vanderbilt Law School and the Journal did for me and support future members of the Journal's staff."

"I'm really excited that a first year associate has shown this level of support for the law school," says

Dean Edward L. Rubin. "I know the students on the editorial staff of the *Journal of Transnational Law* are really inspired by Masa's support for them and for the Journal."

Yamamoto, who practices in Milbank Tweed's Global Project Finance group, will transfer to the firm's Tokyo office this summer, and he acknowledges he's excited to be returning home, where he will be part of a smaller office of nine attorneys. Although he's looking forward to returning to Tokyo, where his family lives, he admits he will actually miss Nashville more than New York. "I like Nashville," he says. "People and the weather are both really nice!"

John R. Byers, JD'80
Thomas E. D. Calender, BA'92, JD'95
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Christopher Lee Callas, JD'92
Henry A. Callaway III, JD'83
Donald B. Cameron Jr., JD'74
Harry W. Camp, JD'57
A. Stuart Campbell, JD'78
Jack William Campbell IV, JD'97
James T. Campbell, JD'74
Kevin Blake Campbell, JD'94
Robert James Campbell, JD'97, and Minda Riley Campbell, JD'97
Thomas Edward Campbell, JD'91
William A. Campbell, LLB'65
C. Bryan Cantrell, JD'07
Meredith Ashley Capps, JD'06
Susan West Carey, JD'89
Ronald Dustin Carfield, JD'97
Edward Lane Carlisle, JD'97
Susan Feingold Carlson, JD'84
Malcolm N. Carmichael, JD'73, and Jeannine Hayes Carmichael, BA'73
Kathryn C. Carmody and Sean R. Carmody
Richard P. Carmody, JD'75
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John L. Carr, JD'78
Matthew F. Carroll, JD'98
Caryn Lisa Carson, JD'95
Dan T. Carter, JD'78

William B. Mitchell Carter, JD'68
C.Thomas Cates, JD'65
Taylor Alexander Cates, JD'99
Shiriki Cavitt, JD'04
Deborah Cazan, JD'01
Marlene Ellen Ceroli, JD'81
Robert O'Neal Chadwick Jr., JD'85
Teresa Wing-Yee Chan, JD'05
Sarah Kim Chang, JD'92
Jean-Paul Michael Chappell, JD'01
Joseph Patrick Chase, JD'07
Jeffrey F. Chase-Lubitz, JD'87
A. Douglas Chavis III, JD'74
Jonathan Jay Cheatwood, BS'86, JD'89
William Tompkins Cheek III, JD'91, and
Kathryn Elaine Barnett, JD'92
Stanley M. Chernau, LLB'56, and
Betsy Chernau
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Francis A. Cherry Jr., JD'72
James R. Cheshire III, BA'64, JD'67
Jeffrey Hamilton Chesnut, JD'07
Charles David Chieppo, JD'91
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Kevin Eugene Clark, JD'98
Margaret E. Clark, JD'75
Michelle Clark
Sheandra Rashida Clark, JD'03
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Jonathan Neal Ledsky, JD'86
F.Woodrow Coleman III, JD'69
Patrick D. Coleman, JD'71
Ronald G. Collins, JD'68
Jesse M. O. Colton, BA'50, JD'52
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Walton T. Conn, BA'56, JD'61
Lew Conner, BA'60, JD'63
John V. Connolly and Linda Connolly
Jason Paul Conte, JD'99
William C. Conway, JD'69
David Charles Cook, BA'72
Stephenie Kay Cook, JD'78, and
Richard Foster Cook, JD'79
A. Hamilton Cooke, JD'68
Colleen F. Coonelly, JD'89
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W. Lee Corbett, JD'69
Catherine M. Corless, JD'03
Ronald Lee Cornell Jr., JD'89
James Leo Cosgrove, JD'91, and

Krista Lee Cosgrove, MA'91
Harvey C. Couch III, MA'62, LLB'63
Robert B. Cousins Jr., BA'67
Robert N. Covington, JD'61, and
Paula Anne Covington, MLS'71, MA'94
Troy Robert Covington, JD'02
M. Benjamin Cowan, JD'97
Kenneth Mitchell Cox, JD'85
Jasper A. Cragwall Jr., JD'75
Mark Braxton Craig, JD'85
Clair R. Cramer, JD'73
Phillip Frederick Cramer, JD'00, and
Anna Johnson Cramer, JD'00
James M. Craven, JD'49
Charles Rupert Crawford, JD'83
Jimmy G. Creecy, JD'74
Larry B. Creson Jr., BA'58, LLB'61
Richard W. Creswell, JD'72
Jayson Christopher Criddle, JD'06
Mary A. Crossley, JD'87, and
Thomas J. Juring
Travis A. Crump, JD'03
William Crutchfield Jr., JD'63
Thomas C. Csatari, JD'77
James W. Culbreth, JD'72
M. Elizabeth Culbreth, LLB'67
Tom Cullinan, JD'98
J. Scott Culpepper, JD'96, and
Rebecca A. Culpepper, JD'96
Sterling Gardner Culpepper III, JD'95, and
Tricia Ann Kinney, JD'97
Brian Cummings, JD'98
J. Greer Cummings Jr., BA'70, JD'73

Paul V. Curcio, JD'77
Richard M. Currie Jr., BA'65, JD'71, and
Sarah Price Currie, MA'69
W. Cleland Dade, BA'77, JD'82
Lucy Ann Dalglish, JD'95
Nicole Dawidowicz D'Amato, JD'04
Thomas A. D'Ambrosio, JD'88
Michael D. Daneker, JD'92, and
Amy Clara Kwak, JD'92
Ira M. Dansky, JD'70
Neville Firdaus Dastoor, JD'04
Bradley Edward Davenport, JD'00
Aaron Douglas Davidson, JD'98
Diane Hofbauer Davidson, JD'82
Ed R. Davies, BA'53, LLB'58
Margaret J. Davino, JD'83
Cinnamon Valone Davis, JD'00
Jon Mark Davis, JD'80
Walter Lee Davis Jr., JD'67, and
Carla Gates Davis
Robert S. Day Jr., JD'72
Tracy Barger De Jong, JD'85
Josephine Dean
David Lee DeBord, JD'03
Brian James Decker, BE'99, JD'06
Lynn S. Decker, JD'74
James A. DeLanis, JD'78
Elisabeth Stewart DeLargy, BA'72, JD'77
Constantine G. Demmas, JD'57
John Edward Denneen, JD'92
Rachana Ashok Desai, JD'05

HYATT STUDENT ACTIVITIES FUND

Appendix E

Wayne Hyatt, '68, founding partner of Hyatt & Stubblefield in Atlanta and a national known expert in property law. created the Hyatt Student Activities Fund to underwrite lectures and other academic programs organized by students.

Among the Hyatt events funded during 2007-08 were a talk by newly elected Nashville Mayor Karl Dean, '81; a discussion of the Duke Lacrosse case by James P. Cooney III, attorney for one of the three defendants; a panel discussion of proposed state mandates that girls receive the newly developed vaccine for the human papilloma virus, which can lead to cervical cancer; and a discussion by two attorneys with Bone McAllester Norton of the highly publicized case involving Fisk University's attempt to sell two works in the Stieglitz Collection, originally bequeathed to the university by artist Georgia O'Keeffe with the stipulation that the collection remain intact.

"At Vanderbilt," Hyatt says, "alumni are truly part of the ongoing process of developing the physical and programmatic vision for the law school."

Ward DeWitt Jr., BA'48, JD'51
Joseph A. Di Julio, JD'85
Erik Allen Dibble, JD'06
Donald G. Dickerson, JD'68
Lee Randolph Dickinson, JD'03
Robert Lee Dietz, JD'82

C. Richard Dietzen, JD'50
J.William Dietzen, BA'53, JD'55
Mary Katherine Dimke, JD'02
Douglas Earl Dimond, JD'96
Charles W. Dixon, BA'65, JD'67, and
Mary Eileen Dixon, BA'66
David M. Dixon, BA'54, JD'59
C. Edward Dobbs, JD'74
Marian Cover Dockery, JD'77
Robert Howe Dodd Jr., JD'88
William C. Dodd, JD'71
Harlan Dodson III, JD'69
William Selden Dodson Jr., JD'81
James Brian Doezema, JD'85
Susan Mikes Doherty, JD'76
Comer L. Donnell, JD'65
Kimberley Ann Donohue, JD'04
Melinda M. Doster, JD'92
Kevin Hamilton Douglas, JD'98
Laurelyn Elizabeth Douglas, JD'97, and
Jon Faddis
Harold Lynn Downing, JD'79
Alexis Downs, JD'06
John E. Drew, JD'66
Francis William DuBois III, JD'03
Heather M. Ducat, JD'04
Kathleen Priscilla Duff, JD'06
Michael O'Hara Duff, JD'97
Vincent J. Dugan, JD'87
J. Leland Dugger, JD'63
David Wayne Dulabon, JD'01
John Philip Dulin Jr., JD'93
Darren William Dummit, JD'06

Rhett Conlon Dunaway, JD'89
Stanley K. Dunbar, JD'73, and
Christina M. Dunbar
Joe M. Duncan, LLB'66
Leah Anne Dundon, JD'97
James Donald Dunlop, JD'01
Charles W. Dunn, JD'76
Robert Reynolds Dunn, JD'91
Robert Samuel Duran, JD'01
James F. Durham II, BA'52, JD'54
Timothy John Durken, JD'06
Scott Edward Dwyer, JD'81
Cynda Leigh Eades, JD'90
Melody Hurdle Eagan, JD'94
K. Norman Easley and Sarah M. Easley
Todd Bailey Eberle, JD'72
Charles R. Ebersol Jr., JD'77
John Bryan Echols, JD'81
Paul H. Edelman
Christopher L. Edgar, JD'75
Derek W. Edwards, JD'00
Brandon Eric Ehrhart, JD'00
Frederick F. Ehrsam Jr., LLB'63
Steven J. Eisen, JD'83, MBA'83
Eric J. Eisnaugle, JD'03, and
Carrie J. Eisnaugle, JD'03, MTS'03
John Elder
Scott Austin Elder, JD'97
Hugh G. Eldredge Jr., BA'53, LLB'59
Jean Marie Eliason, JD'93
David Alan Elliott, JD'88
Pamela Kathleen Ellis, JD'88
Erik Howard Elsea, JD'98

Jason Charles Elvers, JD'00
James W. Ely Jr.
Michael Robert Enger, JD'86
Clifford Robert Ennico, JD'80
Hugh Warner Entrekin, JD'86, and
Nancy M. Entrekin, MSN'95
Jason Lawrence Epstein, JD'95
Richard J. Erickson, JD'71
Robert M. Erickson, JD'74
William A. Erwin, JD'74
Shahram Anthony Eslami, JD'94
Aron Joshua Estaver, JD'05
R.Wayne Estes, JD'56
Amy Jo Everhart, JD'98
Gerald L. Ewell Sr., BA'51, JD'53
Douglas W. Ey Jr., JD'79
Kenneth P. Ezell Jr., JD'79
Peter J. Fabricant, JD'68
Misty S. Fairbanks, JD'03
Andrew Michael Fallek, JD'81
Harry L. Fancher, JD'64
Paul Davis Fancher, JD'00, and
Kristen L. Fancher, JD'00
Mark S. Farha, JD'92
Andrea M. Farley, JD'97
Anne-Marie Farmer, JD'03
Nicholas Ryan Farrell, JD'04
Deborah Reule Farringer, JD'02, and
John Lee Farringer, JD'02
Richard Edson Fee, JD'89
Robert Adam Feinstein, JD'96
Douglas M. Felchlin, JD'74
Adrian Elise Feldman, JD'03

Brett David Feldman, JD'98
Steven W. Feldman, JD'78
Charles W. B. Fels, MA'71, JD'74, and
Susan L. Sgarlat, JD'74
Courtney Ellis Felts, JD'03
Eric R. Fenichel, JD'86, MBA'86
Elizabeth Meyer Ferrari, JD'91
Howard M. Feuerstein, BA'61, JD'63
Scott Webster Fielding, JD'99
Joan B.Tucker Fife, JD'86
Eric Roy Finkelman, JD'82
Fred S. Finkelstein, JD'84
Robert Henry Fischer, JD'99
Daniel I. Fisher, JD'02
David A. Fisher, JD'73
Alan Thomas Fister, BA'80, JD'83
Daniel M. FitzPatrick, JD'83, and
Helen Ix FitzPatrick, BA'82
Charles B. Flannagan II, JD'68
William H. Fligeltaub, JD'76
Chandra Noel Torgerson Flint, JD'04
William E. Flowers, LLB'67
Frank M. Fly
Anne Owings Ford, JD'89
Laura Anne Ford, JD'06
H. Frederick Forte and Catherine K. Forte
Dabney Bragg Foshee, JD'80, and
John David Foshee
David Brian Foshee, JD'95
Edward J. Foster, BA'70, JD'73
Elizabeth Bain Fowler, JD'06
Leigh Ann Fraiser, JD'96
David Andrew Francy, JD'91

Robert J. Frankart, JD'78
Denson Nauls Franklin III, JD'88
J. Michael Franks, BA'71, JD'74
Carey T. Frazier, JD'63
James Atticus Freeman III, BA'69, JD'72
Karen Waggle Fries, JD'89
Frederick Allen Frost, JD'84
John H. Frye III, LLB'65
Miharu Furihata, JD'97
Donna J. Gagliardo, JD'87
Richard J. Gagnon Jr., JD'91
Charles O. Galvin
Thomas R. Gamble, JD'67
Andrew M. Gant Jr., BA'49, LLB'51
Laura L. Gant
Robert A. Garber, BA'53, JD'55
Donald E. Garrison, JD'73
Sidney C. Garrison Jr., BS'42
Don Gerald Gaskill Jr., JD'94
James D. Gass, JD'65
Joseph V.W. Gaston, JD'64
Vassilios C. Gatzimos, JD'80, and
Crystal Gayle
Simon Alexander Gaugush, JD'00
Bradford M. Gearinger, JD'65
Guy G. Gebhardt, JD'73
Jeffrey Robert Geldens, JD'03
David A. Gemunder, JD'94
Otto B. Gerlach III, LLB'67
Gina Marie Giacone, JD'95
James Christopher Giancarlo, JD'84
Joseph W. Gibbs, JD'79
William W. Gibson, JD'80

Stephen E. Gilhuley, JD'69
John P. Gill, BA'58, JD'60
Daniel Nathan Gilmer, JD'04
Marc Bradley Gilmore, JD'89
Sarah Jane Glasgow, BS'01, JD'04
Gregory Wilkes Glass, JD'89
Kurt S. Gleeson, JD'83
Norman Lars Goeschko, JD'88
Joan Arbour Goldsmith, JD'78
James J. Gonzales, JD'72
Joshua Michael Goodwin, JD'06
Stephen D. Goodwin, JD'78
Kristin E. Goose, BA'04
Thomas Napier Gordon, BA'73, JD'76
Amir Gorji, JD'04, and Margaret Gorji
Jane Harbaugh Graham, JD'82
James Charles Grant, JD'89, and
Bridget W. Grant, JD'90
Tonya Michelle Gray, JD'99
Elizabeth Graybill, JD'02
Joshua Green, BA'46, JD'49
Nelson Frederick Greene, JD'88
Mark M. Greisberger, JD'74
Jeremy H. Greshin, JD'85
James Blount Griffin, JD'01
J. Leigh Griffith, JD'76
Meredith M. Griffith, BA'94, JD'98
Ingrid Elizabeth Grinde, JD'84
David Albert Groenke, JD'81
Alan D. Gross, JD'74
Ashley Therese Grovert, JD'07, and
Kevin Kasarjiar
Janice Cook Groves

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Tucker Person Guerry, JD'96
Peter J. Gulden III, JD'04
David Lance Gunn, JD'03
Linda Lou Gustad, JD'93
Christopher P. Guthrie and
Tracey E. George
Robert Arthur Guy Jr., JD'94
Jennifer Shorb Hagerman, JD'99
Richard Haglund III, JD'03
Alan Ross Haguewood, BA'94, JD'98
Gilbert Hahn III, JD'78
Michael Christopher Hainen, JD'97
Miles Edward Hall, JD'03
William M. Hames, JD'62
Lawrence J. Hamilton, JD'81
Taylor Steven Hammond, JD'07
Joan Goodlet Hamner, JD'75
Peter W. Hampton, JD'49
Kenneth E. Hand, JD'76
Grant Alan Harbrecht, JD'92
J. B. Hardcastle Jr., JD'87
John Gregory Hardeman, JD'77
Laura Michelle Hardesty, JD'07
Craig William Harding, JD'83
Thomas Griffin Hardy III, BA'79, JD'82
Lester V. Harmon, MA'48, JD'51, and
Peggy Brugge Harmon, MA'47
Richard Haroian, JD'76
Walter G. Harper, JD'74, and
Phyllis L. Allen Harper
Kent Harrell, JD'62
J. Edward Harris, JD'60

Appendix E

M.Taylor Harris Jr., JD'72
T. Alan Harris Jr., JD'90
Bruce L. Harrison, JD'72
Eric Lampton Harry, BA'80, MBA'83, JD'84
Robert D. Hart Jr., JD'68
Bradford Grant Harvey, JD'95
Robb S. Harvey, BS'82, JD'85

A Global Ambassador

As CEO of Island Global Yachting and president of Vanderbilt Law School's National Council, Frank Garrison '79 promotes the law school to the global business community.

By Grace Renshaw

Frank Garrison's most recent business venture is a global adventure. As the CEO of Island Global Yachting, which develops and operates marinas all over the world, Garrison currently oversees the design and construction of more than 30,000 boat slips in Dubai, which he describes as "one of the most interesting and commercial places on the planet." In addition to their activities in Dubai, IGY has acquired or developed and manages marinas in the Caribbean, Mexico, the United States and Greece, and is currently working on a mega-yacht project in Sibenik, Croatia.

"The legal aspects of this business are fairly complex," he says. "Every jurisdiction is different,

and we're dealing with different governments, environmental regulations and issues, Patriot Act issues, maritime law, contracts, employment – everything."

Garrison practiced with Farris, Warfield & Kanaday at the beginning of his career, and he credits that experience and his legal education with preparing him for a successful career as an investment banker and private equity manager. "Law school was by far the best educational and intellectual experience I'd ever had, thanks to teachers like Tom Sherrard and Jim Cheek ('67)," he says. "The three years I practiced with Farris, Warfield & Kanaday were an extension of that experience because Steve Ramp ('74) and Tom Kanaday ('67) were also great teachers."

Garrison left law practice to start a business in 1982 because "I wanted to be more on the firing line in terms of benefiting from or suffering the consequences of the business decisions I saw my clients making," he recalls. "I didn't leave practicing law because I didn't like it. There's a real luxury in practicing law from an intellectual standpoint—it puts you through your paces every day and sharpens the way you think. I think that perhaps it was just in my DNA to play more of a principal than an advisory role. In the 25 years since I left practice, I've been involved in close to 100 acquisitions of companies, spin-offs, mergers and more than 90 public tender offers. Being able to communicate with counsel has been a tremendous advantage. I

certainly don't know all the answers, but because of my legal training, I generally know what questions to ask."

Garrison's family connections to Vanderbilt include both parents and a grandfather, S.C. Garrison, who was president of Peabody College. He earned his undergraduate degree at Vanderbilt, finishing a double-major in business and economics in three years. A staunch supporter of the law school since earning his J.D., he views his current role as president of the National Council as an opportunity to serve as an ambassador for the school and to offer a real-world perspective on legal education. "I take every opportunity I can to mention my affiliation with Vanderbilt," he says. "I look back on law school as the most formative educational experience I received, and I am really grateful for that. I'm a big fan of Dean Ed Rubin and Chancellor Nick Zeppos, and I'm motivated and proud to do whatever I can to support the law school and the university." Garrison's wife, Amy Price Garrison (A & S '79) serves on the board of the Eskind Diabetes Clinic and recently provided for the establishment of a diabetes research lab at Vanderbilt Medical Center.

Garrison's support for Vanderbilt extends to his law classmates. He was a "vocal and visible" supporter of Mayor Karl Dean, '81, and serves as commissioner of the Nashville Airport Authority, a position former Mayor – and former law classmate– Bill Purcell, '79, asked him to take on. "Being mayor is hard, and I have great admiration for anybody

who's willing to take on the challenges and responsibility of that job," he says. "When Bill asked me for something, of course I was going to say yes."

Timothy Gage Harvey, BA'95, JD'00
Aubrey B. Harwell III, BA'92, JD'95
Crista A. Harwood, JD'06
William Scott Hastings, JD'97
N. Don Hasty, MD'69, and
Kathryn T. Hasty
Stephen Barclay Hatcher, JD'81
Elizabeth Kemmerer Haynes, BS'98, JD'03
William Joseph Haynes III, JD'95
Kathryn Bracken Hazelrig, JD'06
William C. Heer III, JD'90
John J. Heflin III, BA'75, JD'78
Alan David Hegi, JD'86
Jeffrey W. Hellberg, JD'67
Brian William Heller, JD'98
John R. Hellinger, JD'77
Paul Michael Helms, JD'03
Kal Helou, JD'90
George E. Henderson, JD'75
John H. Henderson Jr., BA'58, JD'61
Kirk J. Henderson, JD'92
Peter Van Ness Henderson, BA'69, JD'81
Roy W. Hendrix Jr., JD'51
Martha S. Henley, JD'05, and
Simon Andrew Henley
Douglas S. Henry, BA'49, JD'51, and
Loiette Hume Henry, BA'49
William Schley Hereford, JD'88
Salvador M. Hernandez, JD'99

Steven Edward Herz, JD'91
Daniel F. Hewins, JD'71
Henry Jacob Heyming, JD'99, and Angela
Saleeba Heyming, JD'01
Aja Elena Hicks, JD'06
Josephine Herring Hicks, JD'86
Thomas A. Higgins, LLB'57
Christopher Rodney Hill, JD'06
Gregory Charles Hill, JD'93
Mark D. Hillier, JD'00
Robert Lee Hines Jr., JD'86, MBA'86
Eric Christian Hipp, JD'97
Kevin Patrick Hishta, JD'82, and
Diane Hishta, BSN'80
Brad Wilson Hissing, JD'90
Jack R. Hlustik, LLB'64
Michael Dickinson Hobbs, JD'91
Jerold Bruce Hoffman, JD'87
James C. Hofstetter, BA'71, JD'74
Scott Hugh Hogan, JD'88
Cory Hohnbaum, JD'90
William A. Holby, BA'76, JD'79
Robert Michael Holland Jr., JD'86
Cathy Elaine Holley, JD'88
David McMillian Holliday, JD'80
William Hunter Holliday, JD'92
William D. Hollings Jr., JD'74
Donald M. Hollingsworth, JD'72
John J. Hollins, BA'55, JD'57
Eileen Saunders Holloway, JD'89
Edsel Ford Holman Jr., JD'76
James C. Holman, JD'71
Amy Todd Holmes, JD'04, and Kevin Craig

Holmes, BS'96, MS'98, PhD'02
Brian Warfield Holmes, JD'02
James E. Holmes, BE'55, LLB'61
Lyman L. Holmes, JD'75
Owen McRee Holmes IV, JD'89
Shannon Holt, JD'02
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Collins Weaver Hooper, JD'96
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Amy Catherine Martoche
George Wade Hopper, BA'79, JD'82, and
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Elizabeth H. Hosch, JD'84
William Robb Hough Jr., JD'79
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Christopher Lee Howard, JD'91
Kenneth H. Howard, JD'71
Rebecca Russell Howard, JD'04
David Martin Howe, JD'83
John R. Howell, JD'68, and
Linda Howell, BSN'66
Thomas A. Hoy, BA'71, JD'78
James Andrew Hoyal II, JD'80
Heather J. Hubbard, JD'04
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Margaret Ann Huckstep, JD'78
C. Reid Hudgins III, JD'70, and
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Stewart Marshall Huey Jr., JD'83

Appendix E

David Andrew Hughes, BE'84, JD'91
James Randolph Huguely, JD'96
David S. Humberd, JD'71

A Phenomenal Job

Nii-Amar Amamoo '07 is thriving as a first-year associate at Kelley Drye & Warren in New York

After spending three years in New York working in Goldman Sachs' securities division, 2007 graduate Nii-Amar Amamoo admits to being "very nervous" about moving to Nashville to start law school in 2004. He returned to New York last summer to join Kelley Drye & Warren as a first-year associate, and while he loves his job, he admits that he misses the pleasant weather and large apartment he enjoyed in Nashville. "I resisted for a while, but I finally gave in and bought the thicker jacket, the hat, the gloves," he says. When he and his roommate, 2007 graduate Adam Herman, a firstyear associate with Allen & Overy, are both at home, "we become very aware that our apartment is closet-sized."

As the youngest member of the law school's National Council, Amamoo volunteered to play a continuing leadership role at the law school before he graduated last spring. "I really want to stay involved because I had such a great experience at Vanderbilt and in Nashville that I want to make sure others have the same opportunity," he says. "Vanderbilt did a phenomenal job of preparing us for

the rigors of the workplace – and for the actual work we're doing: Vanderbilt has the advantage of being extremely competitive academically, but it achieves that without that sense of 'it's either you or me.' It's a great corporate law school, but it's also a school that makes you really feel welcome and happy to be there."

Amamoo also found that Vanderbilt prepared him for the workplace in a way he hadn't anticipated. "Especially with larger firms, you're rarely working on something on your own – you have to be able to work well in a team," he says. "I spent three years doing that at Vanderbilt. Another positive aspect is that Vanderbilt's size gives you an opportunity to gain your own voice. If you're going back and forth with professors and other students, thinking in a systematic way and presenting those thoughts, you know how to engage in that kind of dialog with a client or a senior attorney."

Amamoo, who is originally from Birmingham, Alabama, and holds his undergraduate degree in public policy studies and history from Duke, has found he's thriving in New York despite the colder winters and plans to stay there for the foreseeable future. "New York is a wonderful place to practice law," he says. "I'm focusing on bankruptcy and corporate restructuring, and I've been fortunate to have the opportunity to tackle a wide variety of problems."

Appendix E

VANDERBILT UNIVERSITY LAW SCHOOL NATIONAL COUNCIL 2007/2008

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Partner
Ables Baxter Parker & Hall
Huntsville, AL

Nii-Amar Amamoo '07
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New York, NY

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Market Street Management Co.
Nashville,TN

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Litigation Partner
Latham Shuker Eden & Beaudine
Orlando, FL

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Brock Investment Group
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Nashville,TN

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PricewaterhouseCoopers
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Dalton Strategic Partnership
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Schick
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Alston & Bird
Atlanta, GA

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Coughlin Stoia Geller Rudman &
Robbins
Atlanta, GA

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Beatrice C. Hubbard '75
Brentwood,TN

Ruth E. Johnson '75
Sr. Development Officer, Principal Gifts

Meharry Medical College
Nashville,TN

Andrew M. Kaufman '74
Partner
Kirkland & Ellis
Chicago, IL

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Partner
Locke Lord Bissell & Liddell
Dallas,TX

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American Express Company
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U.S. Federal Communications
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President/CEO
Senior Care
Louisville, KY

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SVP, General Counsel, Secretary
Agilent Technologies
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Executive Director
Arcapita, Inc.
Atlanta, GA

Stephanie Ethel Parker '84
Partner
Jones Day
Atlanta, GA

MaryEllen Sullivan Pickrell '94
Partner
Waller Lansden Dortch & Davis
Nashville,TN

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Founding Member
Sherrard & Roe
Nashville,TN

Dianna Baker Shew '87
Member
Stites & Harbison
Nashville,TN

Keith B. Simmons '76
Managing Partner
Bass Berry & Sims

Nashville,TN

Leslie Dale Simmons II '84
Member
Helms Mullis & Wicker
Charlotte, NC

Gary J. Simon '83
Partner
Hughes Hubbard & Reed
New York, NY

Richard H. Sinkfield '71
Partner
Rogers & Hardin
Atlanta, GA

Bernard Taylor Sr. '82
Partner
Alston & Bird
Atlanta, GA

Hon. Aleta A. Trauger '76
Judge
U.S. District Court, Middle District of Tennessee
Nashville,TN

Stephen M. Vinsavich '73
General Attorney
BellSouth (retired)
Birmingham, AL

Appendix E

Ashley T.Wiltshire Jr. '72
Executive Director
Legal Aid of Middle Tennessee (retired)
Vanleer,TN

Jessica Adams Winfree '01
Murfreesboro,TN

Hillyer M.Young '68
Smith Gambrell & Russell
Atlanta, GA

Appendix E

Vanderbilt Law School Class Agents

Class agents support the law school fundraising efforts each fiscal year (July 1 through June 30) by contacting their classmates to encourage 100% giving participation for each class.

1948 Wilson Sims
Bass Berry & Sims

1949 Cecil D. Branstetter
Branstetter Stranch & Jennings

1950 Maclin P. Davis Jr.
Waller Lansden Dortch & Davis

1951 Ward DeWitt Jr.
Trabue Sturdivant & DeWitt (Retired)

1952 Frank S. King Jr.
King & Ballow

1953 F. Clay Bailey Jr.
Tune Entrekin & White (Retired)

1954 Roy A. Miles Jr.
Private practice

1955 William P. Ortale
Ortale Kelley Herbert & Crawford

1956 Thomas J. Trimble

Appendix E

Southwest Gas Corporation (Retired)

1957 Arnold S. Schickler
Schickler & Schickler

1958 Arnold M. Weiss
Weiss Spicer

1959 David E. Nelson Jr.
Wagner Nelson & Weeks

1960 Richard A. Jones
Evans Jones & Reynolds

1961 Joel W. Richardson Jr.
Private practice

1962 Charles M. Corn
Public Defender, 10th Judicial District (Retired)

1963 L. Bruce Ables
Ables Baxter Parker & Hall

1964 James Timothy White
Stites & Harbison

1965 John M. Colvin Jr.
Luxury Beach Home Construction (Retired)

1966 Frank A. Woods
Woods Capital Group

1967 George V. Crawford Jr.

Appendix E

Gullett Sanford Robinson & Martin

1968 Andrew W. Bolt II
Bolt Law Offices

1969 Ames Davis
Waller Lansden Dortch & Davis

1970 John H. Bailey III
Cumberland – Swan Incorporated (Retired)

1971 Michel G. Kaplan
Sherrard & Roe

1972 Claude O. Ramer II
IdleAire Technologies Corporation

1973 Stephen M. Vinsavich
BellSouth Telecommunications (Retired)

1974 James W. Coupe
Law Offices of James W. Coupe

1975 Mark E. Edwards
Columbia/HCA Healthcare Corp.

1976 Keith B. Simmons
Bass Berry & Sims

1977 William R. O'Bryan Jr
Miller & Martin

1978 A. Stuart Campbell

Stites & Harbison

1979 Leigh Walton
Bass Berry & Sims

1980 Laurence M. Papel
Baker Donelson Bearman Caldwell & Berkowitz
1981 Michael L. Dagley
Bass Berry & Sims

1982 John M. Johnson
Lightfoot Franklin & White

1983 Michael L. Phifer
Private practice

1984 Fred S. Finkelstein
Lawrence & Finkelstein

1985 William J. Holley II
Parker Hudson Rainer & Dobbs

1986 Adam K. Peck
Lightfoot, Franklin & White

1987 David R. Gelfand
Milbank Tweed Hadley & McCloy

1988 Sloan Schickler
Schickler & Schickler

1989 Louis Theros
Dickinson Wright

1990 Kurt D. Zimmerman
Private practice

1991 Warren B. Lightfoot Jr.
Maynard Cooper & Gale

1992 John C. Herman
Coughlin Stoia Geller Rudman & Robbins

1993 Edward P. Boyle
Venable

1994 Gregory L. Wilson
Denali Partners

1995 Thomas H. Lee
Waller Lansden Dortch & Davis

1996 Matthew R. Burnstein
Waller Lansden Dortch & Davis

1997 James A. Crumlin Jr.
Bone McAllester Norton

1998 Scott J. Lynn
Gaylord Entertainment Company

1999 James M. Zimmerman
Taft Stettinius & Hollister

2000 Damon P. Goode
Troutman Sanders

2001 Corey J. Stringer
Baker Donelson Bearman Caldwell & Berkowitz

2002 Todd R. Overman
Hogan & Hartson

2003 Catherine M. Corless
Gideon & Wiseman

2004 Kyonzté Hughes
Howell & Fisher

2005 Jenny Lee Hayes
Metropolitan Government of Nashville
Department of Law

2006 Ashley Palmer
Powell Goldstein

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David Ford Hunt, JD'60
Robert N. Huseby, JD'72
Andrew Mark Hutcher, JD'86
Robbie Alexander Hyde, JD'93
Ernest E. Hyne II, JD'77
Robyn Nicole Walters Iler, JD'94
Frederick M. Isaac, JD'66
Justin Ryan Ishbia, JD'04
Mark Andrew Ison, JD'04
Kristen E. Ittig, JD'96
Fred E. Ivy Jr., JD'49
Stephen Clark Jackson, JD'89, and

Sarah Bruce Jackson, JD'90
Jenna L. Janss, JD'93
Richard L. Jarashow, JD'71
John Cecil Jarvis, JD'75
Hunter Jefferson, BA'95, JD'98
Marc Russell Jenkins, JD'03
Alston Jennings Jr., JD'73
Jill Kristine Jensen, JD'04
Allen L. Jewell, BA'51, JD'56
Mark David Jicka, JD'91
Robert Stephen Jobe, JD'95, and
Katy Marie Brandt, MBA'95
Kirk David Johnson, JD'99
Margaret W. Johnson, BA'65
Mary Jo Johnson, JD'81
Nathan Warren Johnson, BA'94, JD'98
Robert Paul Johnson, JD'88
Robert Searls Johnson, JD'96
Scott J. Johnson, BA'71, JD'74
Carol Griffin Mathis Joiner, JD'94
Amanda Cathlene Jones, JD'05
Dianna Renea Jones, JD'03
Gregory Davis Jones, JD'98
J. Barry Jones, JD'84
John Raymond Jones Jr., JD'81
Kimberly A. Jones, JD'86
Owen D. Jones and Lydia Jones
Paul Barry Jones, JD'60
Richard A. Jones, BA'51, JD'60
Robert Shepherd Jones, JD'94, MBA'94,
and Mary Kay Jones
Susan Shands Jones, BA'74, JD'77
Amy Katherine Jordan, JD'04

Kenneth U. Jordan, JD'74
Marc Ward Joseph, JD'83, and
Ann Lilly Joseph, BA'84
Robert J. Kabel, JD'72
Robert C. Kain Jr., BE'76, JD'78
Rod Kanter, JD'00
Edward M. Kaplan, LLB'64
Morris N. Karch, JD'49
Judith Frances Subjack Karp, JD'90
Deborah Lynn Karsten, JD'86
Roy Keathley, BA'54, LLB'57
James E. Keeley, LLB'67
Heather Criss Keller, JD'91
Michael J. Kelley II, JD'74
Brian Timothy Kelly, JD'07
Edward S. Kelly Jr., BA'67, JD'70
Bruce B. Kelson, JD'93, and
Monique M.Vasilchik Kelson, JD'92
Kristopher William Kemp, JD'97
John A. Kendall, JD'72
Albert N. Kennedy, JD'76
Charles E. Kennedy Jr., JD'81
Charles Stuart Kennedy III, JD'88, and
Angela Turkett Kennedy, JD'86
Mary Katherine Kennedy, JD'84
Steven P. Kennedy, JD'74
Richard J. Keshian, JD'82
Laura F. Ketcham, BA'02, JD'05
David N. Keyser, LLB'66
Robert Conrad Khayat Jr., JD'99
Angela Vitale Kidd, JD'02, and
David M. Kidd
Tara Jean Kilfoyle-Burks, JD'03

Ronald W. Kilgore, JD'71
James J. Killean, JD'99
Chisoo Kim, JD'04
Simon Kimmelman, JD'78
Robert Richard Kinas, JD'86
Tim Michael Kinskey, JD'90, MBA'99
William John Kirby Jr., JD'84
Kimberly Short Kirk, JD'94
Carl K. Kirkpatrick Jr., BA'59, JD'62
Steven A. Kirsch, JD'94
David Edward Kirtley, JD'91
Jane Elizabeth Kirtley, JD'79
C. Edward Klank III, JD'96
Laurin Blumenthal Kleiman, BA'80, JD'83,
and Norman Jay Kleiman, MS'82, PhD'89
Joseph W. Klein, JD'82
James R. Klingler, BA'84, JD'87, and
Karen Harris Klingler, BSN'86
Elizabeth Owen Koch, JD'05

Making a Mark

The Class of '51 is still making a positive impact on Vanderbilt Law School

Ward DeWitt's law school class –the Class of 1951 – was the largest class Vanderbilt Law School had ever admitted. DeWitt and his classmates were returning World War II veterans, and universities and professional schools all over the country experienced an enrollment boom as former soldiers, sailors and airmen took advantage of the GI Bill. "We were all veterans, to a man," he says. "There

was one woman in our class – Bonnie Cowan – and she was also a veteran. We had a lot of drop-outs at the end of the first semester, because some men started the year just to see if they really wanted to study law. It was 15 years before they admitted another class as big as ours."

DeWitt, who served in the Navy, admits to gaining all of the advantages and few of the disadvantages of military service during his relatively brief stint in the Pacific theater. "The war was winding down when I received my amphibious training," he says. "I don't think any of us regretted the fact that the U.S. had dropped the bomb on the Japanese and ended the war."

John Wade was a professor during DeWitt's tenure at Vanderbilt, and DeWitt recalls joking with his classmates about the popular professor's Socratic questioning. "He was extremely erudite and really likable, but he was formidable in the classroom," DeWitt says. "We translated his typical question into" – here, DeWitt adopts a nasal, aristocratic drawl – "'Mr. DeWitt, what am I *thinking?*' Everyone liked him for it, but it could be intimidating when his eye fell upon you."

DeWitt and two classmates – Henry Denmark "Denny" Bell and Bob Warner – formed a firm after they graduated out of necessity. "There were just no jobs for lawyers at that time," he says. "Some of our classmates went into business with their fathers, and two or three got jobs with oil companies, but

most of us were forced to hang out a shingle. In those days we took anything that came in the door. By 1955, two of us were married and the third was getting married, and we needed to make a real living." DeWitt joined a firm that ultimately became Trabue, Sturdivant & DeWitt, which still exists as part of Chattanooga-based Miller & Martin.

DeWitt is an active class agent for a class that still numbers close to 50 surviving members. "I've supported the law school consistently because I got a lot out of Vanderbilt Law School, and I want to give something back," he says. "Some of my late classmates– including Tom Proctor and Sydney Keeble – have really made a mark, and I'd like to see us continue that tradition."

Robert M. Koeller, JD'65
Scott Edward Koerner, JD'07
Kyung Ho Koh, JD'89
Linda R. Koon, BA'68, JD'91
Robert Y. Kopf Jr., JD'69
Kelly Knapp Kost, JD'86
Kathleen Kotcamp, JD'85
Charles L. Kown, BA'65, JD'69
P. Steven Kratsch, BA'79, JD'82
Alan E. Krinzman, JD'78, and
Katherine Genther Krinzman
Edward M. Krishok, JD'87
Charles Thomas Kruse, JD'89, and
Jennifer Jones Kruse
Paul Wendell Kruse, BA'86, JD'89
Benedict P. Kuehne

Margaret N. Kuhlman, JD'91
Andrew Michael Kulpa, JD'05
David James Kumatz, JD'81, and
Kathryn Dianne Crisp, JD'81
Donald Bruce Kuperman, JD'80
Lanny S. Kurzweil, JD'78, and
Lynne W. Kurzweil
Stephanie Moore Kuykendall, JD'84
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Gilbert Russell Ladd, MD'91
Jason Frank Lake, JD'07
Linda D. Lam, JD'03, and
James E.Vergopia
Jayna Partain Lamar, JD'88
Leonard Lance, JD'77
Steven L. Lane, JD'97, and
Tracey Anne Hardin, JD'97
Allen Paul Langjahr, JD'84
Mina Willis Lani, JD'00
Randolph H. Lanier, JD'74
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Christine Ellerman Lapps, JD'93
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Charles Michael Layne Jr., JD'04
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James David Leckrone, JD'69

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Byron Edward Leet, JD'83
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Matthew Harold Leggett, JD'07
Robert Leibowitz
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Jude T. Lenahan Sr., JD'69
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Ralph Z. Levy Jr., JD'77
Arlan David Lewis, JD'96
Charles L. Lewis, JD'76
Mark C. Lewis, JD'97
Zhaoyang Li, JD'00
Dominic A. Liberatore, JD'87
Tricia Lin, JD'91
Louis H. Lindeman Jr., JD'70
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Carter Shaw Lowrance, JD'06
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David P. Lucey, JD'89
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Keith M. Lundin, JD'76
Steven E. Lust, JD'89
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Andrea Lynch, JD'77
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Richard J. Lyon, LLB'68
Todd Michael Lyons, JD'91, and
Holly B. Lyons, BA'88, JD'91
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Charles Ingram Malone, JD'03
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Hugh Jewett Marbury, JD'95
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Mark J. Mathiesen, JD'75
Kelly Bernard Mathis, JD'88
Warren Carroll Matthews, JD'90
Sharon Ann Mattingly, JD'91
Ronald A. May, LLB'53
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Appendix E

A Direct Appeal

Environmental Law Pioneer Van Wolf '73 has helped improve the environment at Vanderbilt Law School

By Grace Renshaw

G.Van Velsor (Van) Wolf Jr. has an effective technique to convince fellow Vanderbilt alumni at Snell & Wilmer to give to the law school each year: A direct appeal. "I quietly point out that it would be a very nice thing if we all could make a gift," Wolf says. His straightforward appeals, during which he also mentions the positive impact on recruiting, have garnered Snell & Wilmer 100% participation in annual giving since Wolf became Firm Representative in 1997.

Wolf has been equally steadfast in his pursuit of a career as an environmental lawyer, a specialty that was virtually non-existent when he conceived of it as a Peace Corps volunteer in East Africa in the late 1960s. Wolf joined the Peace Corps after graduating from Yale in 1966, and the four transformative years he spent as an agricultural consultant in Tanzania and Kenya – where he also became fluent in Swahili – sparked his interest in the potential of environmental law. Several of Wolf 's Yale classmates had entered Vanderbilt Law School immediately after graduation, and another classmate, Jim Blumstein, joined Vanderbilt's law faculty the year Wolf arrived as a 1L. "When I visited Vanderbilt in the spring of 1970, [Admissions

Dean] John Beasley made such an impression on me that I decided to come to Vanderbilt during that interview," Wolf recalls.

Environmental law courses did not exist in the early 1970s, although Wolf managed to take an "excellent" course in the engineering department as a 3L. After graduating in 1973, he spent two years practicing corporate law with Milbank Tweed in New York and taught law in Indonesia for six months before joining the U.S. Solicitor's Office to focus on environmental law. There, he was quickly tapped to edit the *Environmental Law Reporter*.

After five years as the journal's editor-in-chief, eager to put his knowledge of environmental law into practice, Wolf joined Lewis and Roca in Phoenix as the firm's first environmental specialist in 1981.

Wolf moved to Snell & Wilmer in 1991, and the 28-member Environmental Law practice group the firm boasts today offers one gauge of Wolf's impact. He has a fond recollection of sitting across the table from Professor Mike Vandenbergh, who was then an attorney with Latham & Watkins, in a Superfund matter. "Mike is also an experienced environmental lawyer, and it really makes a difference when the person on the other side of the table knows what they're doing," he says. Much of Wolf's current work deals with real estate transactions, compliance counseling, dispute resolution and defending against enforcement actions.

Wolf is gearing up to serve as National Chairman of the American Cancer Society (ACS) for 2009, a role he will assume in November. His understanding of environmental law affords him a unique insight into environmental causes of cancer. "We've always been involved in the issue of cancer and the environment, but we are rethinking the scope of our involvement," he says. Wolf also helped launch and served as president of the Cancer Action Network, the ACS's lobbying arm.

Wolf 's steadfast support for Vanderbilt, both financially and as firm representative, reflects his pleasure at the positive growth in the school itself. "I last visited Vanderbilt four years ago, and the law school I attended was unrecognizable, it had grown so much in capacity and offerings," he says. "Its reputation continues to rise, and the courses are much more in tune with issues we deal with in practice. Not every law school graduate will go on to a law firm, and Vanderbilt is also very good about recognizing those opportunities."

Appendix E

The Firm Giving Program was created overa decade ago to connect Vanderbilt Law alumni in support of Vanderbilt Law School. Firms or corporations with three or more Vanderbilt Law School alumni can participate by naming a Firm Representative to spur and coordinate alumni donations with a goal toward achieving 100% giving participation. We are grateful to these firms and to our alumni for their generosity.

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Florence Ridley: A Steadfast Friend

The legacy of legal education

Although Florence Ridley spent her entire career as a professor of English at UCLA, she has deep roots in Murfreesboro, which has been home to her family for more than 200 years, and at Vanderbilt. Her father, Granville Sumner Ridley Jr., graduated from Vanderbilt Law School in 1916 and, after serving as an Army officer in World War I, joined the Murfreesboro law practice her

grandfather, Granville Ridley Sr., had founded in 1870. Her niece, Elizabeth Stewart Delargy, now an attorney in Austin, Texas, earned her law degree at Vanderbilt in 1977, and her nephew, John Green, who continues the family tradition of practicing law in Murfreesboro, earned his J.D. in 1987.

At a time when few women pursued graduate degrees, Professor Ridley earned a Ph.D. at Harvard after earning her Master's in English at Vanderbilt. "I had not initially intended to pursue it so far, but I became more and more interested," she recalls. She joined the UCLA faculty immediately after earning her Ph.D., and became the first woman to chair UCLA's faculty senate in 1977. Although Professor Ridley retired from UCLA's faculty in 1993, she remains an active Chaucerian scholar.

Having devoted her life to teaching and scholarship – "I cherished my students," she says Professor Ridley is committed to providing the means to allow young women – particularly those from Murfreesboro and Tennessee – to pursue the study of law at Vanderbilt. She recently made a bequest to revive the Granville S. and Elizabeth Ridley scholarship, which her father originally initiated with instructions to provide a scholarship until the funds he provided were depleted.

"Education is the most valuable legacy you can offer future generations," said Dean Edward L. Rubin. "The scholarships funded by Florence Ridley and other donors enable us to attract strong students

who really benefit from the caliber of legal education we provide at Vanderbilt."

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Robert P.Thomas, BA'63, MA'65, JD'70
J. Garrison Thompson, LLB'63
J. L.Thompson III, LLB'64

Appendix E

Michael L.Thompson, JD'97
Patricia Halvorson Thompson, JD'76
Clare Judith Thomson-Smith, MSN'98, JD'03

A Teacher and a Mentor

Andy Kaufman, '74, is one of 29 affiliated faculty members who are Vanderbilt gradutes

Andy Kaufman, who majored in English at Yale, originally thought he would pursue a career as a college professor. By his senior year, Kaufman had mastered the scholarly essay and concluded that – while he enjoyed literature – he didn't want to spend an entire career dissecting the works of literature he loved. He decided instead to pursue another career that required strong writing skills – the law.

Kaufman chose Vanderbilt Law School in part because he wanted to experience life outside of New England and in part because "jobs were leaving New England in droves in the early 1970s, and my sense was, if I had any interest in exploring the world, there was a lot to explore beyond the narrow confines of the Northeast."

At Vanderbilt, Kaufman developed an interest in business and transaction law and served as editor-in-chief of the *Law Review*. "That opened a lot of doors," he says.

Now an expert in financing and secured transactions, Kaufman is one of a number of

Vanderbilt alumni whose contributions to the law school include teaching and mentoring. This spring, he is commuting to Nashville each week from his office in Chicago, where he is a partner with Kirkland & Ellis, to teach Secured Transactions and a short course, Realities of Commercial Lending, as an adjunct professor on Vanderbilt's law faculty.

Over the course of his career, Kaufman says, "The basic principles of commercial law haven't fundamentally changed, but transactions have become more sophisticated and complex, and things move at a much faster pace. Much of the evolution in the applicable law has resulted from the need to adapt to an increasingly service- and information-based economy from the traditional manufacturing-based economy upon which our commercial law principles had been established."

He advises young lawyers to remain flexible. "Flexibility is one of the keys to success," he says. "The common thread of my practice has been commercial law, but I've dealt regularly with mergers and acquisitions, general corporate matters, securities law, real estate finance, bankruptcy and business transactions and regulations are becoming increasingly complex."

Guilford F.Thornton Jr., BS'84, JD'90
Nancy Vermylen Thornton, JD'02
John Lochry Thurman, JD'84
H. Kenan Timberlake Jr., JD'61
Elizabeth Sara Tipping, JD'03

Maynard E.Tipps, JD'71
Jay L.Tobin, JD'82, MBA'82
George Alexander Tolbert, JD'07, MBA'07
Christopher Tulloch Toll, JD'91
Gerald R.Toner, JD'75
Jameson W.Toner, JD'07
Mary Beirne Touchstone, JD'88
Robert W.Towler, JD'68
Darrell G.Townsend, BA'73, JD'77, and
Deborah Townsend, BA'75
Joel Edward Tragesser, JD'97
Martha J.Trammell, JD'71
Pamela Camille Trautman, BA'70, JD'80
James Matthew Trent, JD'05
Mary Beth Tripp, JD'81
Gerard A.Trippitelli, BA'95, JD'98
Kenneth B.Trotter, JD'93
Ann Litton Tuck
Andrew W.Tunnell, JD'94
Edward L.Turner III, BA'66, JD'70, and
Mary Lee Hunter Turner, BA'67
William Landis Turner, JD'65
Wayne E. Uhl, JD'81
Jerome Bill Ullman, LLB'66
J. Gary Underwood, JD'79
Jeffrey Omar Usman, JD'03
Donald C.Van Pelt Jr., JD'74
Gary A.Vanasek, JD'76
Frank J.Vandall, JD'67
Johnnie Frank Vann, JD'83
Rebecka Vaughan-Lambert
Amanda Joy Vaughn, JD'99
Jonathan Ross Vaughn, JD'82, and

Cynthia Simon Vaughn, JD'82
Irwin B.Venick, JD'75
Eric Viars
Barry R.Vickrey, BA'71, JD'77, and
Mary Green Vickrey, BA'71
Juan G.Villasenor, JD'01
John N.Villios, JD'76
Michael Sebastian Vitale, JD'05
John C.Vogt Jr., LLB'63
Brian Patrick Voke, JD'84
Mark R.Von Sternberg, JD'73
Thomas E.Wagner, JD'73
Bradley Evan Wahl, JD'85
Robert H.Waldschmidt, JD'76
Edward Joseph Walinsky, JD'79, and
Frances Ferguson Walinsky, MA'T"77
Anne Kubale Walker, JD'88
James L.Walker, JD'72
Mary LaRue Walker, JD'81
Michael Joseph Wall, BA'02, JD'05
Allen M.Wallace, JD'73
Edwin E.Wallis Jr., BA'69, JD'72
James F.Walsh Jr., BA'55, JD'60
Sara Porter Walsh, JD'78
Grayson Todd Walter, JD'06, and
Lynette Marie Pirilla, JD'06
Michael Leland Walton, JD'99
Karen Ann Wandel, JD'99
Elizabeth Holland Ward, JD'82
Charles H.Warfield, BA'47, LLB'49
Elizabeth Salisbury Warren, JD'97
Hershell A.Warren, JD'78, MBA'79
James Ivey Warren III, JD'91

Thomas D.Washburne Jr., JD'80
Wilbert Washington II, JD'83
Timothy James Weatherholt, JD'04, and
Emily Turner Weatherholt, JD'04
Robert H.Weaver, LLB'59
Richard Scott Weavil, JD'07
Roy Wedeles Jr. and Ellen Z.Wedeles
Thomas Kiefer Wedeles, JD'03
Paul Prestin Weidner, JD'04
Kenneth Ray Weigand, JD'82
Kane C.Weiner, BA'77, JD'80
Michael W.Weisbrod and
Richelle G.Weisbrod
Arnold M.Weiss, BA'56, JD'58
David Eric Weiss, JD'95
Don Welch Jr., MA'75, PhD'76
M. Bernadette Welch, JD'99
Dee Ann Weldon-Wilson, JD'83
Patricia Weldon-Wilson
Arthur R.Welhoelter, BA'70, JD'73, and
Judith A.Welhoelter
Robert J.Welhoelter, JD'02
Harry Walker Wellford, JD'50
Curtis R.Welling, JD'75, and
Katharine A. Hutchins Welling
Steven Mark Wells, JD'89
Rebecca L.Wells-Demaree, JD'89
Melissa Lea Werthan, JD'86
Andrew John Wertheim, JD'83, and
Sibyl C. Peyer, JD'83
Ashley Lynne West, JD'00
Dudley M.West, JD'80
Ron West, JD'86

Appendix E

Mark H.Westlake, JD'77
Lucy Chapman Weymouth, JD'85

An Incredible Alumni Network

Pamela Holland's Beasley Scholarship opened doors

When Hurricane Katrina shut down the Tulane University campus at the beginning of Pamela Holland's senior year, Holland took refuge at her brother's home in Washington, D.C., and immediately started making phone calls. Within hours, she had landed an internship with Senate Majority Leader Harry Reid. "I literally said, 'Hi, I'm in Washington for the semester, and I'd like to work somewhere,'" she says. "The worst aspect of Katrina for me wasn't what to do after I left campus; it was applying for law school with no professor recommendations, because everybody was scattered all over."

Holland chose Vanderbilt, where she is a John S. Beasley Scholar, because she concluded that "Vanderbilt would open more doors for me. I want to return to Atlanta to practice," she says, "and Vanderbilt has an incredible alumni network there." Holland visited Beasley Scholarship sponsor Jack Hardin, '68, at the offices of Atlanta-based Rogers & Hardin, the firm he cofounded, to thank him for funding her scholarship, and then worked for the firm as a summer associate after her 1L year. "It was great to be able to work at a law firm that first summer," she says. "It really gives you competence

going into your 2L year." She will return to Rogers & Hardin for half of summer 2008 and spend the other half as an associate at Alston & Bird's Atlanta office.

As Holland was deciding which law school to choose, an older brother provided her with a spreadsheet analysis of her future debt load for each option. Her Beasley Scholarship provides a grant of full tuition along with a stipend for expenses. "It was pretty amazing," she says, "I was attracted to Vanderbilt because of the quality of the school, its size and its atmosphere, but knowing I would graduate debt-free was huge."

Established in honor of former Admissions Dean John Beasley by Jack Hardin, '67, and Mark Dalton, '75, the John S. Beasley II Honor Scholarship is awarded to students with the personal qualities, promise and potential to be a leader at the law school and in the legal profession.

George T.Wheeler Jr., JD'77
Jeanette Armington White, JD'02
Robin Bicket White, BA'95, JD'98, and
Jason L.White
Thomas Chadwick White, JD'01
George L.Whitfield, BA'60, LLB'63
Kathryn Virginia Whitfield, JD'05
Kimberly Davis Whitfield, JD'90
Jeremy Thomas Whitt, JD'98
Alyssa M.Wilcox and Michael D.Wilcox
Steven R.Wild, JD'94
Vanessa Fieve Willett, JD'97

Appendix E

Ernest B.Williams III, BA'49, LLB'54, and
Jane F.Wittichen Williams
John Jason Williams, JD'05
Laurel Comstock Williams, JD'85
Martin Michael Williams
Mattielyn Beatrice Williams, JD'82
Nikita Simone Williams, JD'06
Samuel Douglas Williams Jr., BA'87,
JD'90
Mitsue M.Williamson
Philip L.Willman, JD'78
Amanda Wilson, JD'98
Eric L.Wilson, LLB'64
F. Perry Wilson Jr., JD'67
Fred P.Wilson, JD'50
Ralph E.Wilson, JD'49, and
Mary Ann Murray Wilson, BA'48
William R.Wilson Jr., JD'65
David Alan Wimmer, JD'91, and
Leslie Howard Wimmer
Jessica Adams Winfree, BS'98, JD'01
August Carl Winter, JD'81
Bettie J.Winton, JD'01
Patricia Murtaugh Wise, JD'90
Autumn Joy Witt, JD'04
Joan Wohlstetter
G.Van Velsor Wolf Jr., JD'73
Emily Boswell Wood, JD'05
Jane Pine Wood, JD'87
Robert Edward Wood Jr., JD'68, and
Ann M.Wood
G. Kent Woodman, JD'74
Joseph Ray Woods, BA'66, JD'69

Saralee Woods
Thomas C.Woods, BA'69, JD'72
Claude H.Workman III, MD'73, and
Elizabeth M.Workman
Randolph L.Worth, JD'72
Julian H.Wright Jr., JD'92, MDV'92
Robert L.Wright, JD'50
Peter Wucetich, JD'03
George H.Wyatt III, JD'75
J. Randall Wyatt Jr., JD'66
Aaron Wyckoff, BA'65, JD'68
Roger D.Wylie, JD'91
Jasmin Yang, JD'05
John Michael Yarborough, JD'82
John Howard Yardley, JD'81
G.Thomas Yearout, JD'76
Christina M.Yerian, MDV'99, JD'07
William J.Yost, JD'73
Benjamin Lawrence Young, JD'05
Erwin Paul Young III, JD'80
Hillyer M.Young, JD'68
Jeffrey Mark Young, JD'94
Malcolm D.Young Jr., JD'68
Phillip Gary Young Jr., JD'00
Renee M. H.Yuen, BA'94, JD'97
Jeffrey Zager, BA'82, JD'85, and
Susan Reinfeld Zager, JD'86
Eric Larson Zalud, JD'85
Wei Zhang, JD'06
Robert Mathias Zielinski, JD'89
James McCord Zimmerman, BA'96, JD'99
Kurt D. Zimmerman, JD'90
Mara Elizabeth Zimmerman, JD'04

Pamela L. Zimmerman
Jonathan Edward Zweig, JD'89

Foundations, Corporations and Other Organizations

Acxiom Corporation
Adams and Reese
Adams and Reese/Stokes Bartholomew
Agilent Technologies Inc.
Alfred P. Sloan Foundation
All Seasons
American Express Foundation
Andrews Kurth
Andrus Family Fund
Anheuser-Busch Foundation
Anne Potter Wilson Foundation
Annie E. Casey Foundation
Aon Foundation
Arent Fox
Arnold & Porter
Atelier
Atticus Trust
Bailey's Pub & Grille
Baker Botts
Baker Donelson Bearman Caldwell & Berkowitz
Baker Hughes Foundation
Balch & Bingham
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Barnes & Thornburg
Bass Berry & Sims
Belle Meade Premium Cigar & Gifts
BellSouth Corporation

Bookman Used Books
Boston Foundation Inc.
Boult Cummings Conners & Berry
Branstetter Stranch & Jennings
Brooks Brothers
Bruegger's Bagel Bakery
Bryson & Bryson Attorneys

ALUMNI AFFILIATED FACULTY
Laurence R. Ahern III, '72, Partner, Burr & Forman

H. Lee Barfield II, '74, Partner, Bass Berry & Sims

Turney P. Berry, '86, Member,Wyatt Tarrant & Combs

Robert S. Brandt, '66, Tauger & Tuke

Gary M. Brown, '80, Baker Donelson Bearman Caldwell & Berkowitz

Judge Joe B. Brown, '65, U.S Magistrate Judge, Middle District of Tennessee

Sheila Jones Calloway, '94, Juvenile Court Referee, Metropolitan Nashville

James H. Cheek, '67, Partner, Bass Berry & Sims

S. Carran Daughtrey, '94, Assistant U.S. Attorney, Middle Tennessee District

Appendix E

Karl F. Dean, '81, Mayor of Nashville

Mark E. Edwards, '75, Chief Labor & Employment Counsel, HCA

C. J. Gideon Jr., '78, Partner, Gideon & Wiseman

Christian Hornsnell, '79, Partner, Milom Joyce Horsnell & Crow

David L. Hudson, '94, First Amendment Scholar, Freedom Forum First Amendment Center at Vanderbilt University

Andrew M. Kaufman, '74, Partner, Kirkland & Ellis, Chicago

Judge E. Clifton Knowles (B.A. '73), United States Magistrate Judge, Middle District of Tennessee

Bradley A. MacLean, '81, Assistant Director,Tennessee Justice Project; Of Counsel, Stites & Harbison

Will Martin, '68, Will Martin Company

The Honorable Gilbert S. Merritt, '60, U.S. Court of Appeals for the Sixth Circuit

W. Michael Milom, '71, Parnter, Milom Joyce Horsnell & Crow

William L. Norton II, '82, Member, Boult Cummings Conners & Berry

Josh Perry, '02, Assistant Professor of Medical Education & Administration, Vanderbilt Medical School

Steven A. Riley, '78, Partner, Riley Warnock & Jacobson

Lucinda E. Smith, '76, Directory, Legal Aid Society of Middle Tennessee & the Cumberlands

David J. Tarpley, '71, Managing Attorney, Consumer/Housing Section, Legal Aid Society of Middle Tennessee & the Cumberlands

Robert D. Tuke, '76, Partner,Trauger & Tuke

Timothy L.Warnock (B.A. '84), Partner, Riley Warnock & Jacobson

Robert C.Watson, '74, Senior Vice President & Chief Legal Officer, Metropolitan Nashville Airport Authority

Justin P.Wilson, '70, Partner,Waller Lansden Dortch & Davis

Passing It On

Appendix E

The Barney D. Byrd Scholarships make it possible for "two deserving students" to attend Vanderbilt Law School each year

Barney Byrd, '79, realized during law school that he "really liked the idea of running my own company." After graduating from Vanderbilt Law School in 1979, he earned his M.B.A. at the University of Pennsylvania's Wharton School of Business and then served a short stint with a real estate development firm in Chicago before returning to Nashville. In Nashville, he founded General Capital Corporation, a real estate investment company, in 1983 and founded Gen Cap America, a private equity firm, in 1985.

Both companies have been successful. Byrd's strategy at the private equity firm is to invest in mid-size companies with revenues of between $5 million and $100 million. Gen Cap is now one of the oldest, most successful buyout firms in the Southeast, and its portfolio investments have been consistently profitable. Byrd credits his legal training with honing his strategic planning as well as his negotiating skills. "We spend a lot of time going over and working out documentation, and I've found my legal background to be a great plus," he says.

Supporting Vanderbilt is almost programmed into Byrd's DNA. He and his siblings were the third generation of Byrds to attend Vanderbilt as undergraduate or graduate students. He and his

brother, Andrew, graduated in the same law class. Two other brothers, Benjamin and Thomas, graduated from Vanderbilt Medical School, following in the footsteps of their father and grandfather. Both are practicing in Nashville.

In 2006, Byrd decided to fund two Barney D. Byrd merit scholarships each year at the law school. "Vanderbilt has a wonderful program, but they have to be competitive, and one of the important ways to do that is to attract top students," he says. "I am really grateful for the excellent legal education I got at Vanderbilt, and I wanted to support the law school and make that experience possible for others."

Buffalo Billiards
Caffeine Coffee Bar
Calypso Cafe
Carr Family Foundation
Cartridge World
Caterpillar Foundation
Ccillinni, Inc.
Chadwick Law Firm
Cheeseburger Charley's
Childers Law Firm
Ciba Specialty Chemicals
CLARCOR INC.
Clark & Company
Coastal Bend Community Foundation
Coco Inc.
Community Foundation of Greater Memphis
Community Foundation of Louisville

Community Foundation of Middle Tennessee
Con Edison
Cooper Kettle
Corbett Crockett & Leckrone
Counsel Corporation U.S.
Country Music Hall of Fame
Covington & Burling
Crystals For Fine Gifts and Jewels
Demos Steak & Spaghetti House
Dillard's
DLA Piper US
Eden Foundation
Elders Bookstore
Eli Lilly & Company Foundation
ExxonMobil Foundation
Facility Services Management, Inc.
Fannie Mae Foundation
Federalist Society for Law and Public Policy
Fidelity Investments Charitable Gift Fund
Firefly Grille
FJC Gift Certificate Fund
Fleming's Steakhouse
Frist Center for Visual Arts
Frost Brown Todd
Fulbright & Jaworski
Gabriel Foundation
GE Foundation
Ginette Boutique
Glades Foundation
Gordon & Betty Moore Foundation
Grace's Shop For Ladies

Gullett Sanford Robinson & Martin
Hard Rock Cafe
Harwell Howard Hyne Gabbert Manner
Henry Laird Smith Foundation
Holland & Knight
IBM International Foundation
IF Management Inc.
ING Foundation
Ingersoll-Rand Company
J. Garrison Thompson
J. Michaels Clothiers
Jack C. Massey Foundation
Jamison Steel Rule Die Inc.
Jason's Deli
Jewish Foundation of Memphis
JustGive
Kalamata's
Kaplan Educational Centers
Kathryn and W. Harry Schwarzschild Fund
Kilpatrick Stockton
Kirkland & Ellis Foundation
LaMacchia Family Foundation
LaRoche Family Foundation
Lehman Brothers Holdings Inc.
Leitner Williams Dooley & Napolitan
Lewis Warburg Foundation
Lightfoot, Franklin & White
Lilly Endowment Inc.
Locke Lord Bissell & Liddell
Lumen Lamps & Shades
Mac Cosmetics
Macy's Foundation
Mambu Restaurant & Bar

Marsh & McLennan Companies Inc
MasterCard International
Mathis Pfohl Foundation
Maynard Cooper & Gale Foundation
McCabe Pub
McFaddens Nashville
McGuireWoods
McKenna Long & Aldridge
McPherson's
MeadWestvaco Corporation
Men's Wearhouse
Miss Marple's Dinner Theater
Nancy & Victor S. Johnson Jr. Foundation
Nashville Bicycle Company
Nashville Kats
Nashville Lifestyles Magazine
Nashville Predators
Nashville Symphony Association
Nashville Trunk & Bag Co.
Nathan & Isabel Miller Family Foundation
New York City Opera
New York Philharmonic
Nissan North America Inc.
Norrell & Powers-Norrell
Noshville Delicatessen
Obelisk
Olshan Grundman Frome Rosenzweig & Wolosky
O'Melveny & Myers
Orion Building Corporation
Orrick Herrington & Sutcliffe
Papa John's Pizza
Paul J. Hartman Memorial Tax Forum

Piranha's Bar and Grill
Pizza Hut
Pizza Perfect
Prince & Hellinger
Proskauer Rose
Provence Breads & Cafe
Quintec Films Corporation
Rebecka Vaughan Lingerie
Regions Bank
Reynolds Rencourt Foundation Inc.
Richard & Ellen Bodorff Charitable Foundation
Rockwell Collins Inc.
Roly Poly
Rumors Wine & Art Bar
Samsonite Travel Expo
Sandra Shelton, Inc.
Savage Gallery
Scarlett Begonia Inc.
Schickler & Schickler
Schwab Fund for Charitable Giving
Scripps Howard Foundation
Seward & Kissl
Shayne Foundation
Sherrard & Roe
Simpson Thacher & Bartlett
Snell & Wilmer
Sommer Barnard
State Farm Companies Foundation
Stephen J.Weaver Foundation
SunTrust Bank Atlanta Foundation
Surdna Foundation
Sutherland Asbill & Brennan

Ten Thousand Villages of Nashville
The Ayco Charitable Foundation
The Bailey Law Firm
The Bay and Paul Foundations
The Beer Sellar
The Dallas Foundation
The Donut Den
The Freedom Forum
The Henriksen Charitable Trust
The Lanier Family Foundation
The Melting Pot Restaurant
The New York Community Trust
The Old Spaghetti Factory
The Oxford Shop Inc
The Pfizer Foundation
The Phillips Law Office
The Planethood Foundation
The Pound Civil Justice Institute
The Rosewood Corp
The Rossi Family Trust
The Studio Salon
The Walt Disney Company Foundation
Time Warner Incorporated
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Valero Energy Foundation
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Vinson & Elkins
Wachovia
Waller Lansden Dortch & Davis

Weber Law Firm
Weiss Spicer
White & Case
Wildhorse Saloon
Winston-Salem Foundation
Woo Skin Care & Cosmetics
Yost Robertson Nowak
You Greek Me Greek

Class of 2007 Gift

Our thanks go to the 86 members of the Class of 2007 – both J.D.s and LL.M.s – who pledged a total of $57,550 to the Thomas R. McCoy Scholarship, which honors Professor McCoy, who retired last spring, and to the Kent Syverud Scholarship, honoring Dean Syverud for his service at the law school. 2007 graduate Jennifer Johnson presented a check to the law school during commencement on May 11.

2007 Class Gift Committee
Ashley Alfonso
Jordan Arnot
Ashlee Gray
Mark Hosemann (co-chair)
Jennifer Johnson (co-chair)
Lauren Loew
Constance Russell
Nii-Amar Amamoo (co-chair)
Aaron Ashcraft
Ashley Grovert
Alex Hui

Emily Judge
Josh Lynch
Cappie Tennant

Appendix E

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2005

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Wiseman, Jr., Thomas A

2. Court or Organization
Tennessee, Middle

3. Date of Report
05/15/2006

4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)
U.S. District Judge, Sr.Status

5. ReportType (check appropriate type) Annual

6. Reporting Period
01/01/2005 to 12/31/2005

7. Chambers or Office Address
777 U.S. Courthouse
801 Broadway
Nashville TN 37203

8. On the basis of the information contained in this Report and any modifications pertaining thereto, it

is, in my opinion, in compliance with applicable laws and regulations.

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

Position, Name of Organization/Entity

1. Board Member Sister Cities of Nashvil1e

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)
NONE (no reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Incom

DATE, SOURCE AND TYPE, GROSS INCOME

1. 2005 Tennessee Consolidated Retirement System 4,011.24

B. Spouse's Non-Investment Income - (If you were married during any portion of tile reporting year, please complete this section. (dollar amount not required except for honoraria)

DATE, SOURCE AND TYPE

1. 2005 Tennessee Consolidated Retirement System

IV. REIMBURSEMENTS - transportation, lodging, food, enterainment. (Includes those to spouse and dependent children. See pp. *2S-27* of instructions.)

SOURCE, DESCRIPTION

1. University of Cincinnati Cincinnati, OH, National Products Liability Moot Court Competition, April 8-9,2005 ($564 meals, hotel, and transportation)

2. Sir Richard May Seminar on International Law and International Courts The Hague, The Netherlands, September 11-17, 2005 ($1500 portion of tuition, hotel and transportation)

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE - (No such reportable gifts.)

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

Appendix E

CREDITOR, DESCRIPTION, VALUE CODE

1. SunTrust Mortgage. Richmond. VA Mortgage on Rental Property #1, L
2. Pinnacle National Bank, Nashville, TN Mortgage on Investment Property #2, O
3. Pinnacle National Bank, Nashville, TN Unsecured Note, K

VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)
Place "(X)" afier each asset exempt from prior disclosure
B. Income during reporting period
(1) Amount Code (A-H)
(2) Type (eg. div, rent, or int)

C. Gross value at end of reporting period
(1) Value Code 2 (J-P)
(2) Value Method Code 3 (Q-W)

D. Transactions during reporting period
(1) Type (eg. buy, sell, merger, redemption)
If not exempt from disclosure
(2) Date Month- Day
(3) Value Code 2 (J-P)
(4) Gain Code 1 (A-
(5) Identity of buyer/seller (if private transaction)

I. Decherd Marble Granite None J W

2. ----
3. Smallcap World Fund--American Funds A Dividend K T
4. IRA, A.G. Edwards (American Funds-SmallCap World and ICA) S A Dividend J T
5. A.G. Edwards A Dividend J T
6. Rental Property #1, Indian Shores, FL (1997 $172,000) E Rent O R
7. Harbor Funds-Capital Appreciation A Dividend J T
8. Legg Mason-Value Trust K T
9. Centennial Money Market Acct. (A.G.Edwards) A Interest J T
10. Boston Scientific J T Bought 01/06 J
11. Boston Scientific Sold 12/30 J
12. Intel A Dividend J T Bought 03/01 J
13. ----
14. Jensen Fund A Dividend J T
15. Levitt Corp Fla Spinoff BBX Bankatlantic Bancorp Inc. 12/3 Sold 02/14 J C
16. Invesment Property #2 Nashville, TN (2003 $515,000) None O R
17. EMC Corp Mass J T Bought 01/24 J
18. EMC Corp Mass J T Bought 10/26 J
19. Eli Lily J T Part Sold 12/30 J
20. ------
21. Mylan Laboratories A Dividend J T Bought 04/04 J
22. Dreyfus,Greater China Fund A Dividend J T

1. Income Gain Codes
(See Columns Bl and D4)
A= $1,000 or less

B= $1,001-$2,500
C= $2,501-$5,000
D= $5,001-$15,000
E= $15,001-$50,000
F = $50,001-$100,000
G= $100,001-$1,000,000
H1= $1,000,001-$5,000,000
H2= More than $5,000,000

2. Value Codes:
(See Columns C1 and D3)
J= $15,000 or less
K= $15,001-$50,000
L= $50,001-$100,000
M= $100,001-$250,000
N= $250,001-$500,000
O= $500,001-$1,000,000
P1= $1,000,001-$5,000,000
P2= $5,000,001-$25,000,000
P3= $25,000,000-$50,000,000
P4= More than $50,000,000

3. Value Method Codes
(See Column C2)
Q= Appraisal
R= Cost (Real Estate Only)
S= Assessment
T= Cash/Market
U= BookValue
V= Other
W= Estimated

Appendix E

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 el seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS
Mail signed original and 3 additional copies to:
Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N .E.
Washington, D.C. 20544

Appendix E

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2006

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Wiseman, Jr., Thomas A

2. Court or Organization
Tennessee, Middle

3. Date of Report
05/15/2007

4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)
U.S. District Judge, Sr.Status

5. Report Type (check appropriate type) Annual

6. Reporting Period
01/01/2006 to 12/31/2006

7. Chambers or Office Address
777 U.S. Courthouse
801 Broadway
Nashville TN 37203

8. On the basis of the information contained in this Report and any modifications pertaining thereto, it

is, in my opinion, in compliance with applicable laws and regulations.

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

Position, Name of Organization/Entity

1. Board Member Sister Cities of Nashvil1e

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)
NONE (no reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Incom

DATE, SOURCE AND TYPE, GROSS INCOME

1. 2006 Tennessee Consolidated Retirement System 4,133.00

B. Spouse's Non-Investment Income - (If you were married during any portion of tile reporting year, please complete this section. (dollar amount not required except for honoraria)

DATE, SOURCE AND TYPE

1. 2006 Tennessee Consolidated Retirement System

IV. REIMBURSEMENTS - transportation, lodging, food, enterainment. (Includes those to spouse and dependent children. See pp. *2S-27* of instructions.)

SOURCE, DESCRIPTION

1. University of Cincinnati Cincinnati, OH, Judge the National Products Liability Moot Court Competition, April 8-9, 2006 (Transportation, meals and lodging)

2. George Mason University Law & Economics Center Tucson, AZ, Origins of the American Revolution Seminar, April 28-May 4, 2006 (Transportation, meals and lodging)

3. National Institute for Trial Advocacy Denver, Colorado, Instructor, July 7-15, 2006 (Transportation, meals and lodging)

4. National Workshop For Judges San Diego, California, June20-23, 2006 (Transportation, meals and lodging)

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE - (No such reportable gifts.)

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

CREDITOR, DESCRIPTION, VALUE CODE
1. SunTrust Mortgage. Richmond. VA Mortgage on Rental Property #1, L
2. Pinnacle National Bank, Nashville, TN Mortgage on Investment Property #2, N
3. Pinnacle National Bank, Nashville, TN Unsecured Note, K

VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)
Place "(X)" afier each asset exempt from prior disclosure
B. Income during reporting period
(1) Amount Code (A-H)
(2) Type (eg. div, rent, or int)

C. Gross value at end of reporting period
(1) Value Code 2 (J-P)
(2) Value Method Code 3 (Q-W)

D. Transactions during reporting period

Appendix E

(1) Type (eg. buy, sell, merger, redemption)
If not exempt from disclosure
(2) Date Month- Day
(3) Value Code 2 (J-P)
(4) Gain Code 1 (A-
(5) Identity of buyer/seller (if private transaction)

1. Decherd Marble Granite None J W
2. Smallcap World Fund--American Funds E Dividend Sold 11/27 K E
3. IRA, A.G. Edwards (American A Dividend Funds-SmallCap World and ICA) J T redemption 12/06 J A
4. A.G. Edwards A Dividend sold 3/27 3/27 K D
5. Rental Property # 1, Indian Shores, FL (1997, $172,000) E Rent 0 Q
6. Harbor Funds-Capital Appreciation None Sold 11/29 J C
7. Legg Mason-Value Trust A Dividend Sold 11/29 K D
8. Centennial Money Market Acct. (A.G. Edwards) A Dividend J T
9. Intel None Sold 01/19 J
10. Jensen Fund B Dividend Sold 11/29 J C
11. Invesment Property #2 Nashville, TN (2003 $515,000) None O T Sold 01/06 O
12. EMC Corp Mass None Sold 11/27 J
13. Eli Lily None Sold 11/27 J
14. Mylan Laboratories None Sold 11/27 J
15. Dreyfus,Greater China Fund A Dividend K T Bought more 04/04 K
16. First National Bank Olathe Int.lDiv. L T Bought 12/04 L
17. Regions Bank Int.lDiv. K T Bought 12/07 K

Appendix E

18. Investment Property #3, Nashville, TN
(2006 $270,000) None N Q Bought 01/06 N

1. Income Gain Codes
(See Columns Bl and D4)
A= $1,000 or less
B= $1,001-$2,500
C= $2,501-$5,000
D= $5,001-$15,000
E= $15,001-$50,000
F = $50,001-$100,000
G= $100,001-$1,000,000
H1= $1,000,001-$5,000,000
H2= More than $5,000,000

2. Value Codes:
(See Columns C1 and D3)
J= $15,000 or less
K= $15,001-$50,000
L= $50,001-$100,000
M= $100,001-$250,000
N= $250,001-$500,000
O= $500,001-$1,000,000
P1= $1,000,001-$5,000,000
P2= $5,000,001-$25,000,000
P3= $25,000,000-$50,000,000
P4= More than $50,000,000

3. Value Method Codes
(See Column C2)
Q= Appraisal
R= Cost (Real Estate Only)
S= Assessment

T= Cash/Market
U= BookValue
V= Other
W= Estimated

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.
I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 el seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

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Mail signed original and 3 additional copies to:
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Appendix E

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FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2007

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Wiseman, Jr., Thomas A

2. Court or Organization
Tennessee, Middle

3. Date of Report
05/12/2008

4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)
U.S. District Judge, Sr.Status

5. Report Type (check appropriate type) Annual

6. Reporting Period
01/01/2007 to 12/31/2007

7. Chambers or Office Address
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801 Broadway
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NONE (no reportable agreements)

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)
NONE (no reportable agreements)

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Incom

DATE, SOURCE AND TYPE, GROSS INCOME

1. 2007 Tennessee Consolidated Retirement System 4,266.00

B. Spouse's Non-Investment Income - (If you were married during any portion of tile reporting year, please complete this section. (dollar amount not required except for honoraria)

Appendix E

DATE, SOURCE AND TYPE

1. 2007 Tennessee Consolidated Retirement System

IV. REIMBURSEMENTS - transportation, lodging, food, enterainment. (Includes those to spouse and dependent children. See pp. *2S-27* of instructions.)

SOURCE, DATES, LOCATION, PURPOSE, ITEMS PAID OR PROVIDED

1. University of Cincinnati, Rendigs Moot Court Competition April 13-15, 2007 Cincinnati, OH Judge Competition Transportation, meals and lodging

2. George Mason University Law & Economics Center Seminar April 20-26, 2007 Tucson, Arizona Varieties of Skepticism Transportation, meals and lodging

3. Sixth Circuit Judicial Conference May 8-12, 2007 Asheville, North Carolina Yearly Judicial Conf. Transportation, meals and lodging

4. The Brookings Institution, Judicial Symposium on Civil Justice Issues November 11-13,2007 Chicago,IL Judicial Education Program Transportation, meals and lodging

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE - (No such reportable gifts.)

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

CREDITOR, DESCRIPTION, VALUE CODE
1. SunTrust Mortgage. Richmond. VA Mortgage on Rental Property #1, L
2. Pinnacle National Bank, Nashville, TN Mortgage on Investment Property #2, N
3. Pinnacle National Bank, Nashville, TN Unsecured Note, K

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A. Description of Assets (including trust assets)
Place "(X)" afier each asset exempt from prior disclosure
B. Income during reporting period
(1) Amount Code (A-H)
(2) Type (eg. div, rent, or int)

C. Gross value at end of reporting period
(1) Value Code 2 (J-P)
(2) Value Method Code 3 (Q-W)

D. Transactions during reporting period
(1) Type (eg. buy, sell, merger, redemption)
If not exempt from disclosure
(2) Date Month- Day
(3) Value Code 2 (J-P)

(4) Gain Code 1 (A-
(5) Identity of buyer/seller (if private transaction)

1. Decherd Marble Granite None J W
2. IRA, A.G. Edwards (American Funds-SmallCap World and ICA) A Dividend J T sold part *12/07* J B
3. Rental Property # 1, Indian Shores, FL (1997 $172,000) E Rent 0 W
4. Centennial Money Market Acct. (A.G. Edwards) C Dividend L T
5. Dreyfus,Greater China Fund None K T Sold part 11/07 K E
6. First National Bank Olathe CD None Sold 06/07 L B
7. Regions Bank CD B Int.lDiv. K T
8. Investment Property #3, Nashville, TN (2006 $270,000) None Sold 05/07 N Son Thomas A.
) Wiseman, III
9. Union Federal Savings Bank North Providence RI CD None K T Bought 11/07 K
10. Private Bank & Trust Co. Chicago, IL CTF None Bought 06/07 K Dep
11. Private Bank & Trust Co. Chicago, IL CTF None Sold 12/07 K B Dep

1. Income Gain Codes
(See Columns Bl and D4)
A= $1,000 or less
B= $1,001-$2,500
C= $2,501-$5,000
D= $5,001-$15,000
E= $15,001-$50,000
F = $50,001-$100,000

G= $100,001-$1,000,000
H1= $1,000,001-$5,000,000
H2= More than $5,000,000

2. Value Codes:
(See Columns C1 and D3)
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N= $250,001-$500,000
O= $500,001-$1,000,000
P1= $1,000,001-$5,000,000
P2= $5,000,001-$25,000,000
P3= $25,000,000-$50,000,000
P4= More than $50,000,000

3. Value Method Codes
(See Column C2)
Q= Appraisal
R= Cost (Real Estate Only)
S= Assessment
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U= BookValue
V= Other
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

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I certify that all information given above (including information pertaining to my spouse and minor or

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Appendix E

The Nashville Sigma Chi Alumni Chapter Cordially Invites You and Your Sweetheart to Attend

Sigma Chi Annual Honors Dinner

The University Club of Nashville
2402 Garland Avenue, Nashville, Vanderbilt University campus

Thursday, October 18, 2007
Reception (cash bar) 5:30 p.m. Dinner 6:15 p.m.
$38 for alumni, guests

To Honor

2007 Nashville Sigma Chi of the Year

Honorable Thomas A. Wiseman, Jr.
Alpha Psi, Vanderbilt, '52
Significant Sig

Significant Sig Award

Robert A. McCabe, Jr
Beta Sigma, University of Tennessee - Knoxville, 72

Guest Speaker
George H. Cate Jr.
Alpha Psi, Vanderbilt, '49
Significant Sig

Please make checks payable to Nashville Alumni Chapter of Sigma Chi and Mail to Tom Turk, 643 Harpeth Trace Drive, Nashville, TN 37221. Deadline for reservations is Monday, Oct. 15, 2007at noon. For information, contact Brother Turk at 615-356-9036 or turkti@comcast.net.

Please make reservations early to assure your seats as we expect this event to sell out.

Nashville Alumni Chapter annual dues are $25. These can be paid at any time during the year.

See page 2 for registration form

Appendix E

SIGMA CHI FRATERNITY

About Sigma Chi | Members | Sigma Chi Foundation | Partners &Vendors

Award Recipients for Vanderbilt

Significant Sigs
Hon. Lamar Alexander, Vanderbilt '62
Spence M. Armstrong, Vanderbilt '55
Dr. Blair E. Batson, MD, Vanderbilt'41
Hon. Robin L. Beard, Jr., Vanderbilt '61
Jerry C. Breast, Vanderbilt '58
Herbert L. Buchanan, III, Vanderbilt '71
George H. Cate, Jr., Vanderbilt '49
Frank W. Chappell, Vanderbilt '03
John R. Hall, Vanderbilt '55
William R. Kelly, Vanderbilt '26
J. Bernard B. Machen, Vanderbilt '66
John J. Mazach, USN(Ret), USN(Ret.), Vanderbilt '66
Ralph E. McGill, Vanderbilt'21
John L. Parish, Vanderbilt '59
Jack M. Pinkerton, Vanderbilt '50
Sam C. Pointer, Jr., Vanderbilt '56
Dr. Joseph D. Quillian, Jr., Vanderbilt '38
Edgar E. Rand, Vanderbilt '27
Kenneth L Roberts, Vanderbilt '53
Paul W. Sanger, Vanderbilt '28
John A. Warren, Vanderbilt '46
Hon. Thomas A. Wiseman, Jr., Vanderbilt '52

Appendix E

Order of Constantine

Lyttleton C. Anderson, Jr., Vanderbilt '49
John Neal Campbell, Vanderbilt '14
George H. Cate, Jr., Vanderbilt '49
Frank W. Chappell, Vanderbilt '03
Clarence P. Connell, Vanderbilt '06
Hamilton Douglas, Jr., Vanderbilt '08
Thomas H. McAdams, Vanderbilt '60
Joe Scull, MD, Vanderbilt '37

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P.O. HOX469, 1714 Hinman Avenue | Kvanston, H
60201-0469 | (847)869-3655

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Patrizia Riccardi,	)	
Plantiff,	)	
	)	
v.	)	*CASE NO: 3:06-0605*
	)	
Robert Kessler,	)	
Defendant	)	

MOTION TO RECUSE

Now comes Plaintiff, Dr. Patrizia Riccardi, appearing **pro se,** seeking the recusal of Hon. Thomas Wiseman from this case.

There is a Complaint of Judicial Misconduct ("Complaint") pending with the Office of the Circuit Executive of the United States Court of Appeals for the Sixth Circuit. See attached Complaint. For the reasons set forth in the Complaint, Judge Wiseman should have recused himself **sua sponte** from this case. The United States Constitution guarantees an unbiased Judge who will always provide litigants with full protection of all rights.

Therefore, Plaintiff respectfully requests the recusal of Judge Wiseman and the assignment of a

Judge who does not have a conflict of interest in hearing this case.

Sincerely,
Patrizia Riccardi, M.D

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DR. PATRIZIA RICCARDI,	)	
Plaintiff,	)	
v.	)	*3:06-0605*
ROBERT M. KESSLER,	)	
Defendant.	)	

ROBERT M. KESSLER,	)	
Plaintiff,	)	
v.	)	*3:06-0615*
DR. PATRIZIA RICCARDI,	)	
Defendant.	)	

ORDER

Before the Court is Plaintiff Dr. Patrizia Riccardi's Motion to Recuse, Document #269, in 3:06-0605.

The Court *recuses* itself from *3:06-0605*. Case 3:06-0615 having been consolidated with case 3:06-0605, the Court also recuses itself from *3:06-0615*.

It is so **ORDERED.**

Thomas A. Wiseman, Jr.
Senior United States District Judge

Appendix E

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

DR. PATRIZIA RICCARDI,	)	
Plaintiff,	)	
v.	)	CASE NO:
VANDERBILT UNIVERSITY	)	
MEDICAL CENTER, and	)	
DR. ROBERT KESSLER, and	)	
DR. MARTIN SANDLER,	)	
individually,	)	
Defendants.	)	

COMPLAINT

Plaintiff, **Dr. PATRIZIA RICCARDI**, by her attorneys, **BARRETT, JOHNSTON & PARSLEY, and SAPIR & FRUMKIN LLP**, as and for her Complaint against Defendants, ***VANDERBILT UNIVERSITY MEDICAL CENTER, and Dr. ROBERT KESSLER and Dr. MARTIN SANDLER,*** individually, alleges as follows:

I. NATURE OF CLAIMS

1. This is an action for damages brought pursuant to TitleVII, Civil Rights Act of 1964 as amended, 42U S C. 2000(e), and the Tennessee Human Rights Act, T CA. § 4-21-101 **et seq.** alleging sexual harassment and/or a sexually hostile work environment, retaliatory conduct as against the Defendants

Vanderbilt University Medical Center ("Vanderbilt"), Di. Robert Kessler and Dr Martin Sandler. Additionally, Plaintiff alleges claims of personal injury/battery, and intentional infliction of emotional distress against Dr. Robert Kessler for attempted rape/sexual assault occurring on June 20, 2005, and the imprisonment of Plaintiff thereafter.

II. JURISDICTION AND VENUE

2. This is a suit authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 USC §2000(e) **et. seq.** Jurisdiction of this court is invoked pursuant to 42 U.S C. §§2000(e)-5(f) and 28 USC §1343(4) and the Court's supplemental jurisdiction is invoked pursuant to 28 U.S.C. §1367.

3. This Court is one of proper venue because Defendants have contacts with the Middle District of Tennessee sufficient to subject them to personal jurisdiction if the Middle District of Tennessee were a separate State. Accordingly, venue lies in the United States District Court for the Middle District of Tennessee pursuant to 28 U.S.C §1391(b) and (c).

4. All conditions precedent to jurisdiction under 42 USC §§2000(e)-5(f)(3) occurred and have been complied with to-wit: A charge of employment discrimination has been filed with the Equal Employment Opportunity Commission and the Tennessee Commission on Human Rights within 300 days of the commission of the discriminatory employment practice; a notification of right to sue

was received from the Equal Employment Opportunity Commission with respect to the Plaintiffs claims of discrimination on May 10, 2006, granting the Plaintiff the right to bring suit in this Court to redress the grievance, complaints, and injuries the Plaintiff alleges to have suffered as a Result of the events made the basis of this Complaint. This Complaint has been filed within 90 days of notification of the right to sue. (A copy of the Right to Sue letter is annexed hereto as Exhibit "A").

III. PARTIES

5. Plaintiff Dr. Patrizia Riccardi is a citizen of the Country of Italy and a resident of the State of New York, New York County. At all times material herein Plaintiff was employed by Defendant Vanderbilt University Medical Center ("Vanderbilt") Plaintiff remains employed as a Research Assistant Professor in the Department of Radiology and Radiological Sciences at Vanderbilt, Plaintiff continues to work under the direct supervision of Defendant, Dr. Robert Kessler.

6. Defendant Vanderbilt transacts business in the State of Tennessee, and has its principal offices located at CCC-1106 Medical Center North, Nashville, Tennessee 37232-2675.

7. Defendant Dr Robert Kessler is a citizen of the State of Tennessee and a resident of Davidson County, Tennessee. Defendant Dr. Robert Kessler is the Director at the Center for Molecular Imaging at

Vanderbilt in the Department of Radiology and Radiological Sciences.

8. Defendant Dr Martin Sandler is a naturalized American citizen with residency in the State of Tennessee. At all relevant times mentioned herein, Defendant Dr. Martin Sandler was the Professor of Radiology and Radiological Sciences Carol and Henry Pendergrass Chair in Radiology at Vanderbilt. Upon information and belief, Dr. Martin Sandler is slated to become the Associate Vice Chancellor for Hospital Affaire, effective July 1, 2006.

IV. FACTS UNDERLYING PLAINTIFF'S CLAIMS

9. Plaintiff is a medical doctor in the field of psychiatry and received her medical education and training in Italy.

10. Plaintiff moved to the United States of America in 1995. Since moving here, she has continued her training in psychiatry.

11. In July2002, Dr. Riccardi was accepted for a fellowship at Yale University Medical School in psychopharmacology and neuroimaging.

12. Plaintiff's work at Yale was exceptional and she was guaranteed a faculty position at Yale upon completion of her fellowship.

Appendix E

13. In January and August 2003, while still employed at Yale University Medical School, Plaintiff interviewed with Dr. Kessler, an internationally renowned scholar in the field of neuroimaging, for the possibility of continuing her-fellowship in psychopharmacology and neuroimaging at Vanderbilt University Medical Center ("Vanderbilt").

14. Plaintiffs last interview took place at a restaurant and Plaintiff was interviewed by Dr. Sandler, Dr Kessler, and Dr John Gore, Director of the Vanderbilt Institute of Imaging Science. During the interview, Dr. Martin Sandler inappropriately commented to Plaintiff in words or substance, "you know, after ten years of marriage, sex becomes boring, what do you think of that?"

15. Uncomfortable with the topic of conversation raised by Dr. Sandler, Plaintiff attempted to change the topic and said in words or substance, "there are other things more important in a marriage."

16. Dr. Gorethen commented in words or substance, "she is not going to tell you, she is an Italian Catholic." Plaintiff was taken back by the inappropriate sexual comments made to her by the Chair of the Radiology Dept during the interview.

17. Plaintiff was offered the fellowship position at Vanderbilt and gave up her secure position at Yale University Medical School in order to complete her fellowship at Vanderbilt under the study of Dr Kessler.

18. In September 2003, Plaintiff began her fellowship at Vanderbilt and worked part time in pharmacology and part-time in neuroimaging. In July of 2004, she became a Research Assistant Professor in neuroimaging. Although Plaintiff works part-time at Vanderbilt, she is extremely efficient and is able to accomplish a full time work load during her part time schedule thus making her an invaluable asset to Vanderbilt.
19. In or around November 2003, Dr. Kessler began sexually harassing and subjecting Plaintiff to a severe and pervasive hostile working environment by, *inter alia*, expressing his love and admiration for Plaintiff and asking her to many him.

20. In or around January 2004, Dr. Kessler informed Plaintiff that Defendant Dr. Sandler, the Chairman of the Radiology Department, intended to offer Plaintiff a position as a full time Research Assistant Professor at Vanderbilt once she completed her fellowship.

21 Plaintiff informed Dr. Kessler that she needed time to consider whether to accept the position, but she did not think she would accept it because she wanted to work closer to her teenage sons who lived in New York. In response, Dr Kessler became very angry with Plaintiff.

22. Upon information and belief, Dr. Kessler lobbied Dr. Sandler to arrange for a part time position for

Plaintiff so that Plaintiff could spend half of her time in New York with her sons.

23 Dr. Kessler took such measures in order to convince Plaintiff to remain at Vanderbilt after her fellowship.

24. In or around February of 2004, Plaintiff was working and became upset because of a problem her son was experiencing Dr. Kessler hugged Plaintiff. Plaintiff felt extremely uncomfortable and tried to back away from him. Dr Kessler would not let go and would not stop holding her and said, "I like you a lot, kid." Dr Kessler then kissed her forehead and Plaintiff asked him to please let her go.

25 On the same occasion, Dr. Kessler told Plaintiff that he had fallen in love with her.

26. Dr. Kessler informed Plaintiff that from the first time he met her in January 2003, he thought to himself; "God, she is beautiful, I hope I will be able to control myself."

27. Plaintiff was very uncomfortable and tried to ease her way out of the extremely uncomfortable situation without offending Dr. Kessler, who was her supervisor and mentor. Plaintiff feared that if she offended Dr Kessler or reported him to the University, she would lose her job. Plaintiff tried to make Dr Kessler understand that she did not share his feelings and would not have a romantic relationship with him.

28. In or around May 2004, Plaintiff received a letter from the Dean of Vanderbilt School of Medicine appointing her to the part time position of Research Assistant Professor in the Dept. of Radiology and Radiological Sciences for the period of July 1, 2004 through June 30, 2005.

29. Dr Kessler's sexually harassing conduct continued and included repeatedly declaring his love and admiration for Plaintiff and demonstrating his infatuation with her.

30 For example, Dr. Kessler bought Plaintiff flowers and many presents and when she would not accept the gifts, he mailed them to her New York address rather than her Tennessee address so that she could not immediately reject the gifts.

31. On numerous occasions, in a manipulative manner, he told Plaintiff he was experiencing marital problems in order to arouse sympathy from her so that she would spend time with him listening to his problems.

32. Dr Kessler asked Plaintiff if she would marry him if he divorced his wife and told her that if she said no, he would kill her.

33. In or around June 2004, Dr. Kessler became grossly sexually inappropriate with Plaintiff by making comments about her physical attributes.

34. In or around June 2004, Dr Kessler further exhibited his infatuation with Plaintiff by informing her that he felt as if the two of them were married in previous lives. Dr. Kessler explained

41. Dr. Kessler informed Plaintiff that his wife would not divorce him, that she was old and depressed and he could not leave her.

42. On an occasion when Plaintiff was leaving Nashville for New York, Dr. Kessler told her that her leaving made him depressed and that he could not live without her.

43. Dr. Kessler's inappropriate behavior altered the terms and conditions of her work environment and made Dr. Riccardi extremely uncomfortable.
44 On several occasions, Plaintiff made it clear to Dr Kessler that his conduct was unwelcome and she would not engage in a romantic relationship with him.

45. In May 2005, Plaintiff informed Dr. Kessler that she no longer wanted to have any contact with him due to his inappropriate sexually harassing behavior. Despite Plaintiffs request, Dr Kessler still attempted to contact her. In response, on May 31, 2005, Dr Riccardi wrote an e-mail to Dr. Kessler informing him to refrain from contacting her and requesting that he seek his wife's help to do so.

46. On or about June 1, 2005, Plaintiff was reappointed as Research Assistant Professor in the

Dept of Radiology and Radiological Sciences for the term July 1, 2005 through June 30, 2006.

47. One day, after working very late in the lab the prior night, Plaintiff passed by Dr Sandler at work and commented that she was exhausted. In response, Dr. Sandler remarked, "did Dr. Kessler exhaust you?" Dr Sandler's remark implied that Plaintiff was having a sexual relationship with Dr. Kessler.

48. Dr. Kessler's inappropriate behavior culminated in the attempted rape/sexual assault of Plaintiff on June 20, 2005 in Toronto, Canada.

49. On June 20, 2005, Plaintiff and Dr Kessler presented their work at an international convention.

50. Plaintiff purposefully arranged to stay at a different hotel than Dr Kessler in order to avoid him.

51. On June20, 2005, Plaintiff successfully presented her work and she and Dr. Kessler went to dinner at a public restaurant afterwards (which was arranged months before). The restaurant was located at the Four Seasons, the hotel that Dr Kessler was staying at.

52. Prior to dinner, Dr. Kessler suggested to Plaintiff to store her back pack containing her money, traveling documents, jewelry, laptop, and iPod in his hotel room safe. Plaintiff agreed to do so because her

hotel did not have a safe and she did not feel comfortable leaving her valuables in her hotel room.

53 After dinner, Plaintiff and Dr Kessler went to his hotel room to retrieve her backpack. Once they got into his room, he physically attacked Plaintiff and attempted to force Plaintiff to have sex with him by choking her and bruising her in several areas.

54. Plaintiff successfully defended herself, although she was left traumatized, bruised, and battered.

55 Later on, in the morning hours of June 21, 2005, Dr Kessler further traumatized Dr. Riccardi by falsely reporting to the Canadian police that Plaintiff assaulted him.

56. The Toronto Police arrested Plaintiff and forced her to spend one day and one night in jail.

57. Once the Toronto Police saw the defensive nature of Plaintiffs bruises, a decision was made by the police to arrest Dr. Kessler for assaulting Plaintiff.

58. Both Dr. Riccardi and Dr. Kessler were released when the respective charges were dropped by the authorities.

59. Plaintiff called Anita Jenious, Associate Director of the Vanderbilt Opportunity Development Center ("ODC"), while she was still present in Canada in order to make an appointment to report Dr. Kessler's sexual harassment, attempted rape/sexual assault,

and intentional infliction of emotional distress of her.

60. When Plaintiff returned to Vanderbilt, she pursued her complaint with the University against Dr. Kessler only to be further traumatized and discriminated against by Dr. Kessler, the University, and Dr. Sandler.

61. Immediately upon learning of the specifics of Plaintiffs complaint against Dr. Kessler, Ms. Jenious commented, "You know how men are when they fall in love, they are like adolescents and cannot control themselves." Ms. Jenious victimized Plaintiff by accusing Plaintiff of leading Dr. Kessler on. Ms Jenious asked Plaintiff if she did anything to provoke Dr. Kessler's actions, thereby implying that Plaintiff was the cause of Dr. Kessler's unlawful actions.

62. The University, Dr. Kessler, and Dr. Sandler thereafter retaliated against Plaintiff for her complaints against Dr. Kessler, a renowned international scholar, and one of Vanderbilt's prized academics, by denying Plaintiff access to her office where her work could effectively be accomplished and by suspending her from working on the grant to which she was assigned.

63. Upon information and belief; Dr. Kessler and Dr. Sandler played integral roles in the decision-making process to deny Plaintiff access to her office and to suspend her grant work.

64. During this time, Dr. Kessler was allowed to use his office and continue his work with impunity. Although Plaintiff was the one victimized by Dr. Kessler's sexual harassment, assault and battery and intentional infliction of emotional distress, Plaintiff was the one punished (retaliated against) by the Defendants.

65. Dr. Kessler continued to perform grant work and effectively removed Plaintiff from all of his grant work. Although prior to June 20, 2005, Plaintiff was listed in initial grant submission paperwork as an individual to perform work on several of Dr. Kessler's grants, Dr. Kessler deleted all reference to Plaintiff in subsequent grant paperwork that was resubmitted after June20, 2005.

66. After June 20, 2005, Dr. Kessler submitted grants without listing Plaintiff as an individual who would perform work on the grant despite the fact that the grants involved Positron Emission Tomography ("PET") imaging and she was the only staff person at Vanderbilt whom Dr Kessler worked with in PET imaging. Further, when Plaintiff began working at Vanderbilt there was an explicit understanding that Plaintiff would work on all of Dr Kessler's grants. In fact, Plaintiffs Research Assistant Professor position required her to do so.

67. Additionally, in October of 2005, Dr Kessler and the University refused to adequately assist Plaintiff prepare grant paperwork on her own gender grant.

Plaintiff was forced to submit the grant without proper guidance and mentoring and the grant was denied.

68. Because grant work is a key component to obtaining national and international success as a scholar and research scientist, each day Plaintiff was prevented from continuing grant work or denied proper assistance in submission of her own grant work, Defendants prevented her from furthering her career in neuroimaging. Thus, her career opportunity was damaged by Defendants' actions.

69. Despite the fact that Plaintiff made the University aware of such negative consequences to Plaintiffs career, the University delayed in reaching a conclusion to its investigation of the allegations against Dr Kessler.

70. The University failed to provide prompt and effective action regarding Dr. Kessler's unlawful conduct.

71. After six months, in December 2005, the University's ODC department concluded that Dr Kessler "acted inappropriately" towards Plaintiff. Despite the fact that Plaintiffs accusations against Dr. Kessler were very specific, the University's conclusion with respect to Dr Kessler's actions was ambiguous in that the ODC findings do not explain how Dr. Kessler acted inappropriately towards Dr. Riccardi and fail to mention that Dr Kessler sexually harassed and attempted to rape Dr. Riccardi.

72. In January 2006, the Defendants continued to retaliate against Plaintiff for her complaints about Dr Kessler's unlawful sexual harassment towards her. At that time, Dr Kessler refused to participate as co-author in Plaintiffs grant, "Imaging of Dopamine Release in Borderline Personality Disorder."

73. Dr Kessler was the only faculty member at Vanderbilt with a relevant background in PET neuroimaging who could serve the role as co-author on Plaintiffs grant.

74. Dr Kessler was well aware of the importance to Plaintiffs career that he co-author her grant. As an Research Assistant Professor attempting to establish her reputation as a research scholar, Plaintiff needed the support, i.e., co-authorship, of a scholar of Dr Kessler's caliber in order to obtain grant approval.

75. Dr. Sandler, as the Department Chairman, and the University, discriminated and retaliated against Plaintiff by supporting Dr. Kessler's decision and refusing to take any action against Dr. Kessler with respect to his unwillingness to co-author Dr. Riccardi's grant.

76. The Defendant's actions served to damage Dr Riccardi's career opportunities.

77. Defendants' unlawful discrimination against Plaintiff based upon her gender constituted a continuing violation of Title VII and the Tennessee Human Rights Act.

V. AS AND FOR A FIRST CAUSE OF ACTION AGAINST VANDERBILT UNIVERSITY MEDICAL CENTER DISCRIMINATION UNDER TITLE V (HOSTILE WORK ENVIRONMENT)

78. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

79. Dr. Kessler's unwelcome conduct, inappropriate sexual comments, romantic overtures, physical contact, and attempted physical contact constituted a hostile sexual work environment based upon Dr. Riccardi's gender.

80. Defendant employer Vanderbilt is liable for the hostile work environment and sexual harassment perpetrated by Dr. Kessler.

81. By adversely affecting the terms, conditions and privileges of Plaintiffs employment because of her gender, Defendant Vanderbilt violated Title VII.

82. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, pain and

suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

83. Plaintiff seeks compensatory damages, including emotional distress, and loss of enjoyment of life, punitive damages, attorneys' fees and costs.

VI. AS AND FOR A SECOND CAUSE OF ACTION AGAINST VANDERBILT UNIVERSITY MEDICAL CENTER DISCRIMINATION UNDER THE TENNESSEE HUMAN RIGHTS ACT (HOSTILE WORK ENVIRONMENT)

84. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 83 as if fully set forth herein.

85. Dr. Kessler's unwelcome conduct, inappropriate sexual comments, romantic overtures, physical contact, and attempted physical contact constituted a hostile sexual work environment based upon Dr. Riccardi's gender.

86. Defendant employer Vanderbilt is liable for the hostile work environment and sexual harassment perpetrated by Dr. Kessler.

87. By adversely affecting the terms, conditions and privileges of Plaintiffs employment because of her gender, Defendant Vanderbilt violated the Tennessee Human Rights Act.

88. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

89. Plaintiff seeks compensatory damages, including emotional distress, and loss of enjoyment of life, attorneys' fees and costs.

VII. AS AND FOR A THIRD CAUSE OF ACTION AGAINST VANDERBILT UNIVERSITY MEDICAL CENTER (RETALIATION UNDER TITLE VII)

90. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 89 as if fully set forth herein.

91. Defendant Vanderbilt's unlawful acts of denying Plaintiff access to her office where her work could effectively be accomplished, suspending Plaintiffs grant work, and by acquiescing to Dr Kessler's unwillingness to co-author Plaintiffs grant, were deliberate acts of retaliation in response to Plaintiffs complaints and opposition to Dr. Kessler's unlawful sexual harassment under Title VII.

92. By retaliating against Plaintiff in retaliation for her good faith complaints and opposition to Defendant's unlawful discrimination, Defendant Vanderbilt has violated the antiretaliation provisions of Title VII.

93. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, loss of career opportunities, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

94. Plaintiff seeks compensatory damages, including emotional distress and loss of enjoyment of life, front pay, punitive damages, attorneys' fees and costs.

VIII. AS AND FOR A FOURTH CAUSE OF ACTION AGAINST VANDERBILT UNIVERSITY MEDICAL CENTER (RETALIATION UNDER THE TENNESSEE HUMAN RIGHTS ACT)

95. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 94 as if fully set forth herein.

96. Defendant Vanderbilt's unlawful acts of denying Plaintiff access to her office where her work could effectively be accomplished; suspending, preventing and failing to support Plaintiffs grant work; and acquiescing to Dr. Kessler's unwillingness to co-author Plaintiffs grant were deliberate acts of retaliation in response to Plaintiffs complaints and opposition to Dr. Kessler's unlawful sexual harassment under the Tennessee Human Rights Act.

97. By retaliating against Plaintiff in retaliation for her good faith complaints and opposition to Defendant's unlawful discrimination, Defendant Vanderbilt University Medical Center has violated the anti-retaliation provisions of the Tennessee Human Rights Act.

98. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, loss of career opportunities, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

99. Plaintiff seeks compensatory damages, including emotional distress and loss of enjoyment of life, front pay, attorneys' fees and costs.

IX. AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DR. ROBERT KESSLER, INDIVIDUALLY (RETALIATION UNDER THE TENNESSEE HUMAN RIGHTS ACT)

100. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 99 as if fully set forth herein.

101. Defendant Dr. Robert Kessler's unlawful acts of denying Plaintiff access to her office where her work could effectively be accomplished; suspending, preventing and failing to support Plaintiffs grant work; and by refusing to co-author Plaintiffs grant,

were deliberate acts of retaliation in response to Plaintiffs complaints and opposition to Dr. Kessler's unlawful sexual harassment under the Tennessee Human Rights Act.

102. By retaliating against Plaintiff in retaliation for her good faith complaints and opposition to Defendant's unlawful discrimination, Defendant Dr. Robert Kessler has violated the anti-retaliation provisions of the Tennessee Human Rights Act and is subject to personal liability.

103. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, loss of career opportunities, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

104. Plaintiff seeks compensatory damages, including emotional distress and loss of

enjoyment of life, front pay, attorneys' fees and costs.

X. AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DR. MARTIN SANDLER (RETALIATION UNDER THE TENNESSEE HUMAN RIGHTS ACT)

105. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 104 as if fully set forth herein.

106. Defendant Dr. Martin Sandler's unlawful acts of denying Plaintiff access to her office where her work could effectively be accomplished; suspending, preventing and failing to support Plaintiffs grant work; and acquiescing to Dr. Kessler's unwillingness to co-author Plaintiffs grant, were deliberate acts of retaliation in response to Plaintiffs complaints and opposition to Dr. Kessler's unlawful sexual harassment under the Tennessee Human Rights Act.

107. By retaliating against Plaintiff in retaliation for her good faith complaints and opposition to Defendant's unlawful discrimination, Defendant Dr Martin Sandler has violated the anti-retaliation provisions of the Tennessee Human Rights Act and is subject to personal liability.

108. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, loss of career opportunities, pain and suffering, humiliation,

mental anguish, emotional distress and loss of enjoyment of life.

109. Plaintiff seeks damages based on loss of career opportunities, compensatory damages, including emotional distress and loss of enjoyment of life, attorneys' fees and costs.

XI. AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DR. ROBERT KESSLER (PERSONAL INJURY/BATTERY)

110. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 109 as if fully set forth herein.

111. On June 20, 2005, Defendant Dr Robert Kessler physically attacked Plaintiff and attempted to force Plaintiff to have sex with him by choking her and bruising her in several areas.

112. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, physical injury, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

113. Plaintiff seeks compensatory damages, including emotional distress and loss of enjoyment of life, punitive damages, attorneys' fees and costs.

Appendix E

XII. AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DR. ROBERT KESSLER, INDIVIDUALLY (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

114. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 113 as if fully set forth herein.

115. On June 20, 2005, Defendant Dr Robert Kessler physically attacked Plaintiff and attempted to force Plaintiff to have sex with him by choking her and bruising her in several areas.

116. Plaintiff successfully defended herself, although she was left traumatized and battered.

117. In the morning hours of June 21, 2005, Dr. Kessler further traumatized Dr. Riccardi by falsely reporting to the Canadian police that Plaintiff assaulted him and causing Plaintiff to be arrested.

118. The Toronto Police forced Plaintiff to spend one day and one night in jail based on Defendant's false report of assault against Di. Riccardi.

119. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer damages, including, but not limited to, physical injury, pain and suffering, humiliation, mental anguish, emotional distress and loss of enjoyment of life.

120. Plaintiff seeks compensatory damages, including emotional distress and loss of enjoyment of life, punitive damages, attorneys' fees and costs.

XIII. PRAYER FOR RELIEF
WHEREFORE

Plaintiff respectfully requests that the Court:

1. Declare all of Defendants' conduct complained of herein to be a violation of Plaintiffs rights under Title VII and the Tennessee Human Rights Act.

2. Declare Defendant Robert Kessler's conduct complained herein to comprise the torts of personal injury/battery and intentional infliction of emotional distress against Plaintiff.

3. Award Plaintiff the following damages:

XIV. ON THE FIRST CAUSE OF ACTION

4. Damages for pain and suffering, humiliation, mental anguish, emotional distress, and loss of enjoyment of life sustained by Plaintiff, in an amount to be determined at trial.

5. Punitive damages to be determined at trial;

6. Interest on the amount described above calculated at the prevailing rate; and, 7. Attorneys' fees and reasonable costs incurred in prosecuting this action.

Appendix E

XV. ON THE SECOND CAUSE OF ACTION

8. Damages for pain and suffering, humiliation, mental anguish, emotional distress, and loss of enjoyment of life sustained by Plaintiff, in an amount to be determined at trial.

9. Interest on the amount described above calculated at the prevailing rate; and,

10. Attorneys' fees and reasonable costs incurred in prosecuting this action.

XVI. ON THE THIRD CAUSE OF ACTION

11. Compensatory damages for pain and suffering, humiliation, mental anguish, emotional distress, lost career opportunities, and loss of enjoyment of life sustained by Plaintiff, in an amount to be determined at trial.

12. Punitive damages to be determined at trial;

13. Interest on the amount described above calculated at the prevailing rate; and,

14. Front pay to be determined at trial;

15. Attorneys' fees and reasonable costs incurred in prosecuting this action.

XVII. ON THE FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION

16. Compensatory damages for pain and suffering, humiliation, mental anguish, emotional distress, lost career opportunities, and loss of enjoyment of life sustained by Plaintiff; for an amount to be determined at trial.

17. Interest on the amount described above calculated at the prevailing rate; and,

18. Front pay to be determined at trial;

19. Attorneys' fees and reasonable costs incurred in prosecuting this action.

XVIII. ON THE SEVENTH AND EIGHTH CAUSES OF ACTION

20. Compensatory damages for pain and suffering, humiliation, mental anguish, emotional distress, and loss of enjoyment of life sustained by Plaintiff; for an amount to be determined at trial.

21 Punitive damages to be determined at trial;

22. Interest on the amount described above calculated at the prevailing rate; and,

23 Attorneys' fees and reasonable costs inclined in prosecuting this action.

XIX. JURY DEMAND

Plaintiff demands a trial by jury of all issues in this action properly triable before a jury.

Respectfully submitted,

DOUGLAS S. JOHNSTON, JR., (#5782)
LAUREL A. JOHNSTON, (#24532)
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, TN 37201
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SAPIR & FRUMKIN LLP
WILLIAM D FRUMKIN (WF 2173)
KATHRYN E. WHITE (KW 2297)
Attorneys for Plaintiff
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Appendix E

United States District Court for the Middle District of Tennessee, Nashville Division

Robert M. Kessler,
Plaintiff,
v.
Patrizia Riccardi,
Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 3 -06 0615

JUDGE NIXON

TO: (Name and address of Defendant)

Patrizia Riccardi
555 Main Street, Apt. 515
New York, NY 10044

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Kevin H, Sharp, Esq.
Drescher & Sharp, P.C.
1720 CL West End Avenue
Suite 300
Nashville, TN 37203

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEITH THROCKMORTON
DATE JUN 19 2006
SERVICE COPY

COPY
FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN
JUN 19 2006
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

ROBERT M. KESSLER,	) Civil Action,
Plaintiff,	) Case No. 3-06 0615
vs.	) JURY DEMAND
PATRIZIA RICCARDI,	) JUDGE
Defendant.	) MAGISTRATE

JUGDGE NIXON

COMPLAINT

The Plaintiff Robert M. Kessler, M.D. (hereafter, "Plaintiff or "Dr. Kessler'), by and through counsel, and for his Complaint states as follows:

I. NATURE OF THE COMPLAINT

1. This is a civil action arising under the laws of the United States and the State of Tennessee, and is brought pursuant to 28 U.S.C. § 1332, T.C.A. § 29-24-101 et seq. and state common law claims.

Plaintiff files this Complaint against Defendant, Patrizia Riccardi, M.D. (hereafter, "Defendant" or "Dr. Riccardi"), for defamation, negligent and intentional infliction of emotional distress, outrageous conduct, assault and battery, and tortious interference with business relationships.

II. PARTIES AND JURISDICTION

2. Plaintiff is currently a resident of Nashville, Tennessee and. at the time of Defendant's unlawful acts complained of, was a resident of Davidson County, Tennessee and an employee of Vanderbilt University, which is located in Nashville, Tennessee.

3. Defendant, Patrizia Riccardi, is a resident of New York, and at the time of unlawful acts complained of by Plaintiff, was and remains an employee of Vanderbilt University, which is located in Nashville, Tennessee.

4. This Court has jurisdiction over the federal claims in this dispute pursuant to 28 U.S.C. § 1332 because the citizenship of the parties is diverse and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars ($75,000.00), exclusive of interest and costs. This Court also has supplemental jurisdiction over Plaintiffs state law claims under 28 U.S.C §1367 because the claims are so related to Plaintiffs claim under 28 U.S.C. § 1332 that they form part of the same case or controversy.

5. Venue is proper in this Court pursuant to 28U.S.C. § 1332 because a substantial number of pertinent acts took place in this judicial district.

III. FACTUAL BACKGROUND

6. Plaintiff first met Defendant in January 2003 for a brief interview scheduled by another faculty member, regarding a half-time employment position in the Radiology Department of Vanderbilt University. In August 2003, Defendant accepted the position with Vanderbilt University and began working with Plaintiff in Nashville, Tennessee.

7. In late January 2004, Plaintiff and Defendant began a consensual physical relationship, which lasted, with some breaks, until June 2005.

8. On or about June 20, 2005. Plaintiff and Defendant attended a professional meeting in Toronto, Canada. They engaged in consensual sexual intercourse, for which Plaintiff indicated to Defendant his regret for having resumed this relationship. Defendant became absolutely enraged, and attacked Plaintiff physically. She also threw items around the hotel room, attacked Plaintiff with a wooden hanger and crushed Plaintiffs eyeglasses. Plaintiff attempted to push her away and defend himself. Defendant declined to take a cab back to her own hotel and Plaintiff drove her. Plaintiff called the police with respect to this circumstance at the suggestion of the manager of the hotel where he was staying, and due to his concern that Defendant would file a rape charge with the police, which she

had threatened. Plaintiff had blood on his shirt and was in a state of disarray. Plaintiff also had notable defensive injuries, which were documented with photographs, while Defendant had virtually no injuries. The Toronto police, against Plaintiffs wishes, ultimately decided to press charges against Defendant. Defendant pressed counter-charges and denied a relationship existed between the two. Plaintiff requested a rape examination to document these events.

9. On or about June 24, 2005, Defendant submitted a written complaint against Plaintiff to the Opportunity Development Center ("ODC") of Vanderbilt University falsely and maliciously accusing him of sexual harassment and creating a hostile work environment. Defendant knew these accusations were not true.

10. Defendant falsely denied ever having a consensual romantic relationship with Plaintiff despite several witnesses who have corroborated Plaintiffs statements to that fact.

11. During the eighteen (18) months prior to the events in Toronto. Canada, during which time Defendant claims she was subject to "unwelcome advances" by Plaintiff, she did not file a complaint with the ODC or any other official of Vanderbilt University.

12. After an extensive investigation, Vanderbilt University concluded that there was insufficient

evidence to find that Defendant was subjected to any sexual harassment by the Plaintiff.

IV. DEFAMATION

13. Plaintiff realleges and incorporates as if fully stated herein the allegations contained in Paragraphs 1 through 12 of this Complaint.

14. Defendant's conduct described above was of such a nature that it constitutes defamation against Plaintiff in violation of T.C.A. §29-24-101 et. seq.

15. As a direct and proximate result of Defendant's unlawful actions. Plaintiff suffered humiliation, embarrassment and emotional distress.

V. ASSAULT AND BATTERY

16. Plaintiff realleges and incorporates as if fully stated herein the allegations contained in Paragraphs 1 through 15 of this Complaint.

17. Defendant's conduct described above was of such a nature that it constitutes an assault and battery upon the person of Robert M. Kessler in violation of the Tennessee common law.

18. As a direct and proximate result of Defendant's unlawful actions, Plaintiff suffered physical injury, property damage and emotional distress.

Appendix E

VI. INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS/OUTRAGEOUS CONDUCT

19. Plaintiff realleges and incorporates as if fully stated herein the allegations contained in Paragraphs 1through 18 of this Complaint.

20. Defendant's conduct described above was in violation of the Tennessee common law and contrary to all bounds of common decency and resulted in the intentional and/or negligent infliction of emotional distress upon Plaintiff and constitutes outrageous conduct as defined by Tennessee law.

21. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered extreme emotional distress.

VII. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

22. Plaintiff realleges and incorporates as if fully stated herein the allegations contained in Paragraphs 1 through 21 of this Complaint.

23. Defendant's conduct described above was in violation of the Tennessee common law of interference with business relationships.

24. Defendant told Plaintiff that she intended to ruin him professionally.

25. As a direct and proximate result of Defendant's improper and unlawful actions, Plaintiff has suffered damages from the tortious interference.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays as follows:

1. That Defendant be served and required to answer within the time prescribed by law;

2. For recovery of compensatory damages in excess of Seventy-Five Thousand Dollars ($75,000.00) against Defendant;

3. For a recovery of punitive damages in an amount to be determined at trial;

4. For recovery of all costs and attorney fees;

5. That a jury of twelve try this matter;

6. For such other and further relief as the Court may deem just, fit and proper.

PLAINTIFF DEMANDS A JURY TO TRY THE ISSUES IN THIS CAUSE.

Respectfully Submitted,
Kevin H. Sharp, BPR#016287
Drescher and Sharp, P.C.

1720 West End Avenue, Suite 300
Nashville, Tennessee 37212
(615)425-7111

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DR. PATRIZIA RICCARDI,	)
Plaintiff,	)
v.	) CASE NO:
VANDERBILT UNIVERSITY	) 3:06-0605
MEDICAL CENTER, and	) (TAW)(JBB)
DR. ROBERT KESSLER, and	)
DR. MARTIN SANDLER,	)
individually,	)
Defendants.	)

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION IN LIMINE
TO EXCLUDE EVIDENCE OF PLAINTIFF'S
ALLEGED PRIOR BAD ACTS
AND SEXUAL HISTORY AT TRIAL

I. PRELIMINARY STATEMENT

Plaintiff Dr. Patrizia Riccardi (Plaintiff) brought this action pursuant to Title VII, Civil Rights Act of 1964 as amended, 42U.S.C. 2000(e), and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. alleging sexual harassment and/or a sexually hostile work environment, and retaliatory conduct as against Dr. Robert Kessler (Defendant). Additionally, Plaintiff alleges claims of personal injury/battery and intentional infliction of emotional

distress against Defendant for attempted rape/sexual assault occurring on June 20, 2005, and the imprisonment of Plaintiff thereafter. Plaintiff seeks compensatory damages, including emotional distress, and loss of enjoyment of life, front pay, punitive damages, attorneys' fees and costs.

Plaintiff seeks an Order to Exclude Trial Evidence including evidence alleging (1) Dr. Riccardi is sexually aggressive; (2) Dr. Riccardi had disagreements with colleagues at her prior employment at Yale from 2002 to 2003; (3) Dr. Riccardi did not keep in contact with Yale colleagues; (4) Dr. Riccardi went AWOL; (5) Dr. Riccardi was not fulfilling the obligations of her clinical appointment and disagreements regarding her last day at Yale; (6) Dr. Riccardi did not have good emotional stability or dependability; (7) Dr. Riccardi's absences and overall professionalism; (8) Dr. Riccardi had an altercation with Dr. Meltzer in the Psychiatry Department in April 2004 and had arguments with secretaries at Vanderbilt; (9) Dr. Riccardi became upset about the grant writing process at Vanderbilt; (10) Dr. Riccardi had a disagreement with Judy Bourgoin; (11) Dr. Riccardi did not cooperate with David Zald, Assistant Professor of Psychology, Vanderbilt University Medical Center, on a grant study; and (12) Dr. Riccardi had a torrid sexual history filled with numerous romantic partners and abortions.

I. STATEMENT OF FACTS

Dr. Kessler, (who was Dr. Riccardi's supervisor at Vanderbilt), will seek to introduce evidence that Dr. Riccardi is sexually aggressive in defense of Dr. Riccardi's claims against him. For example, Dr. Kessler alleged in his Chronology, dated August 11, 2005, that Dr. Riccardi stated that she had sexual relations with numerous men - 22 in a year; had affairs with married men; she would remember Dr. Kessler as "number 38"; had an unexpected kissing episode in her attorney's office; she slept with her attorney and that he gave her a "nice discount" on her fees. *See* Dr. Robert Kessler: Chronology, dated August 11, 2005, attached as Exh. 1 to the Declaration of William D. Frumkin, Esq. In Support of Plaintiffs Motion in Limine to Exclude Evidence of Plaintiffs Alleged Prior Bad Acts at Trial (hereinafter, "Frumkin Decl.").

Dr. Kessler will also attempt to portray Dr. Riccardi as difficult, unstable and violent. He alleged that Dr. Riccardi had disagreements with colleagues at her prior employment at Yale from 2002 to 2003. *See* Yale Documents, Part I, attached as Exh. 3 to Frumkin Decl.; Yale Documents, Part II, attached as Exh. 4 to Frumkin Decl.; Yale Documents, Part III, attached as Exh. 5. To Frumkin Decl. Specifically, Dr. Kessler intends to introduce into evidence e-mails between Dr. Riccardi and her supervisors at Yale alleging that Dr. Riccardi did not keep in contact with them, e-mails alleging Dr. Riccardi went AWOL, e-mails alleging that Dr. Riccardi was not fulfilling the obligations of her clinical appointment and disagreements regarding her last

day at Yale, a performance evaluation of Dr. Riccardi contained in an e-mail, dated July 18, 2003, alleging that Dr. Riccardi did not have good emotional stability or dependability, and letters from D. Cyril D' Souza, M.D. to the Tennessee Board of Medical Examiners, dated August21, 2004, and Christine McCallum, Federation Credential Verification Services, The Federation of State Medical Boards of the United States Inc., dated September 21, 2006, respectively, containing allegations regarding Dr. Riccardi's absences and overall professionalism. *See* Yale Documents, Part I, attached as Exh. 3 to Frumkin Decl.; Yale Documents, Part II, attached as Exh. 4 to Frumkin Decl.; Yale Documents, Part III, attached as Exh. 5. To Frumkin Decl.

In addition, Dr. Kessler will seek to introduce claims that Dr. Riccardi had an altercation with Dr. Meltzer in the Psychiatry Department in April 2004 and had arguments with secretaries at Vanderbilt. Dr. Kessler will also seek to introduce a memorandum from Dr. Martin Sandler, dated September 28, 2004, alleging that Dr. Riccardi became upset about the grant writing process at Vanderbilt. *See* copies of two (2) memos, both dated September 28, 2004, by Dr. Martin Sandler and Judy Bourgoin, attached as Exh. 6 to Frumkin Decl.

Dr. Kessler will seek to introduce a memorandum from Judy Bourgoin, dated September 28, 2004, regarding an alleged disagreement regarding a grant. Ms. Bourgoin claimed that a telephone conversation she had with Dr. Riccardi

was "sarcastic and somewhat hostile." *See* Frumkin Decl., Exh. 6.

Dr. Kessler will seek to elicit testimony from David Zald, Assistant Professor of Psychology, Vanderbilt University Medical Center, alleging that Dr. Riccardi did not cooperate with him on a grant study.

Dr. Kessler will seek to introduce the Forensic Evaluation of Dr. Patrizia Riccardi, a letter, dated September 25, 2007, from Moisy Shopper, M.D., to Kevin Sharp, Esq., and the curriculum vitae of Dr. Shopper alleging that Dr. Riccardi had a torrid sexual history filled with numerous romantic partners and abortions. *See* curriculum vitae for Moisy Shopper, M.D., attached as Exh. 7 to Frumkin Decl.; Forensic Evaluation of Dr. Patrizia Riccardi, dated September 17, 2007, by Moisy Shopper, M.D., attached as Exh. 8 to Frumkin Decl.; letter, dated September 25, 2007, from Moisy Shopper, M.D., to Kevin Sharp, Esq., attached as Exh. 9 to Frumkin Decl.

II. ARGUMENT

DR. KESSLER'S ALLEGATIONS REGARDING DR. RICCARDI'S PRIOR ACTS AND SEXUAL HISTORY ARE INADMISSIBLE

A. Evidence of Prior Acts Is Inadmissible under Fed. R. Evid. R. 404(b) Because it Fails to Meet the Four-part Test for Admissibility of

Appendix E

Evidence of Prior Acts as Enumerated by the Sixth Circuit

Pursuant to Rule 401 of the Federal Rules of Evidence, "'[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Rule 403 provides that "[although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. The "relevancy standard requires that other-act evidence be admitted only if, after an examination of all the evidence in the case, the trial court concludes that the jury could reasonably find by a preponderance of the evidence that the act occurred and that the defendant was the actor." *Howerton v. Blomquist,* 2007 U.S. Dist. LEXIS 7171, *8 (E.D. Mich. Sept. 8,2006), *quoting United States v. Matthews,* 440 F.3d 818,828 (6th Cir. 2006). Rule 404(b) "provides that evidence of prior acts *is not admissible to prove the character of a person in order to show action in conformity therewith'." *See McLeod v. Parsons Corp.*, 2003 U.S. App. LEXIS 18753, *18 (6th Cir. 2003), *citing* FED. R.EVID.404(b). In the Sixth Circuit, "evidence of prior acts is only admissible if it meets a four-part test: (1) the evidence must be directed toward establishing something other than a party's

propensity to commit the act charged; (2) the other act must be similar enough and close enough in time to be relevant to the matter at issue; (3) the evidence must be such that the jury could find that the act occurred and that the party in question committed it; and (4) the prejudicial effect of the evidence must not clearly outweigh its probative value." *McLeod*, 2003 U.S. App. LEXIS at *18-19, *citing Gastineau v. Fleet Mortgage Corp.*, 137 F.3d 490,494-95 (7th Cir. 1988).

In *McLeod*, an employment discrimination case, the plaintiff argued that the District Court abused its discretion when it excluded testimony concerning other lawsuits against the defendant. *McLeod*, 2003 U.S. App. LEXIS at *16. The Sixth Circuit found no abuse of discretion, stating that "it [was] not apparent that evidence concerning the other employment discrimination lawsuits filed against [the defendant] was relevant, because there was no clear nexus between these lawsuits and this case, [as] [t]he employees who filed these actions worked in several different offices, and were discharged for a variety of reasons." *Id.* at *19. Moreover, the court in *McLeod* held that "the potential for prejudice that would have accompanied this evidence would have substantially outweighed its probative value, and this evidence would have misled the jury." *Id.*

Here, there is no "clear nexus", between Dr. Kessler's allegations regarding Dr. Riccardi's sexual history and disagreements with prior colleagues and

this case. The allegations regarding Dr. Riccardi's sexual history are irrelevant and prejudicial because they concern individuals unrelated to this action from various parts of the world. There also is no nexus between Dr. Riccardi's alleged issues with colleagues and supervisors at Yale and this case. Yale is an entirely different employer for whom Dr. Riccardi was employed during an irrelevant time period. *McLeod*, 2003 U.S. Dist. LEXIS at *19; *see also, Gorski v. Myriad Genetics,* 2007 U.S. Dist. LEXIS 50369 *11-13 (E.D. Mich. July 12, 2007), (employment discrimination action holding that witness testimony regarding prior instances of discrimination were irrelevant because plaintiff failed to establish foundation that witnesses were subject to the same supervisors and worked in the same office as plaintiff).

Similarly, there is no "clear nexus" between allegations that Dr. Riccardi was volatile, unstable, or and uncooperative at Vanderbilt and the facts in this matter in that such allegations have absolutely nothing to do with Dr. Kessler. The allegations cannot meet the four-part test in *McLeod* because they are not directed at anything but establishing that Dr. Riccardi was unstable and therefore either seduced Dr. Kessler or fabricated his assault upon her; they are not similar enough to the facts of this action; and the prejudicial effect of the allegations clearly outweigh their probative value. *McLeod,* 2003 U.S. App. LEXIS at *18-19, *citing Gastineau,* 137F.3d at 494-95.

Based on the foregoing, Dr. Kessler cannot meet the four-part test for admissibility of evidence of prior acts enumerated by the Sixth Circuit.

B. Evidence Offered to Show Dr. Riccardi's Alleged Other Sexual Behavior or Alleged Sexual Predisposition Is Prohibited by Fed. R. Evid. R. 412 Because it Is Irrelevant, Not Probative, and Highly Prejudicial

Evidence offered to prove that an alleged victim engaged in other sexual behavior, or to prove an alleged victim's sexual predisposition, is inadmissible in any civil or criminal proceeding involving alleged sexual misconduct. FED. R.Evid. 412(a). *Socks-Brunot v. Hirschvogel Inc.,* 1999 U.S. Dist. LEXIS 626 *10 (S.D. Ohio Jan. 21,1999) ("The clear language of Rule 412 prohibits the introduction of evidence in either a civil or criminal sexual misconduct case which implicates the sexual behavior or the alleged sexual predisposition of the victim".)

"In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party." FED. R. EVTD. 412(b)(2); *see also Collins v. Allen,* 2005 U.S. Dist. LEXIS 9017 *12 (S.D. Ohio March 16, 2005) (citing FRE 412 in sexual harassment action finding that allegations of plaintiffs past sexual

relationships as contained in defendant's counterclaim were "impertinent" and "scandalous" and recommending that the allegations be stricken). Moreover, "[e]vidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim." Fed. R. Evid. 412(b)(2).

In *Socks-Brunot,* the plaintiff alleged that she was subjected to a hostile work environment based upon sexual harassment, the defendant elicited testimony that the plaintiff initiated conversations of a sexual nature with co-workers and that her comments were "crude and explicit." 1999 U.S. Dist. LEXIS 626 at **3-6. The court pointed out that "[i]n cases involving express demands for sex by a supervisor, current Federal Rule of Evidence 412 clearly prohibits the admissibility of any evidence offered to show other sexual behavior or the sexual predisposition of the alleged victim." *Id.* at*7.[1] The court stated the following:

> The defendant may not offer evidence that the employee had engaged in sexual conduct with other co-workers or supervisors. Such evidence is both intrusive and, as importantly,

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[1] The court in *Socks-Brunot* noted that the former Rule412 "was designed to protect rape victims from intrusive and prejudicial questioning as to other sexual conduct or predisposition in the course of a criminal trial or hearing," (1999 U.S. Dist. LEXIS 626 at *7), and that the currentRule 412 "applies the same logic to civil lawsuits involving claims of 'sexual misconduct'." *Id.* at *8.

without any relevance. Employees are free to engage or not engage in amorous conduct with co-workers. The fact that an employee entered into a consensual relationship with one co-worker or supervisor does not mean that he or she has invited *quid pro quo* demands from a supervisor. That Federal Rule of Evidence 412 prohibits such testimony is beyond debate. *Id.* at *10-11.

The court in *Socks-Brunot* further noted that "[w]hile relevant evidence is generally admissible under Federal Rule of Evidence 403, evidence subject to Rule 412 is presumptively inadmissible, even when offered to disprove 'unwelcomeness' in a sexual harassment case." *Id.* at *15. The court concluded that the evidence presented by the defendant, presenting" the picture of a sexually-aggressive, bad mother and wife, none of which was relevant unless tied to the context of the specific claims made by her against [the defendant]." *Id.* at *33. The court imposed the drastic remedy of granting plaintiff a new trial because the "inadmissible evidence combined with the highly prejudicial content of the testimony convince[d] the Court that the plaintiff was denied a fair trial." *Id.*

Since the instant matter revolves around the question of whether consensual sex took place, Rule 412 prohibits the admissibility of any evidence offered to show Dr. Riccardi's alleged other sexual behavior or alleged sexual predisposition. Any such evidence would be, as in *Socks-Brunot,* 8 "without

any relevance." 1999 U.S. Dist. LEXIS 626 at *10. Moreover, whether Dr. Riccardi entered into consensual sexual relationships is not probative of whether she consented to a sexual relationship with Dr. Kessler. *Id.* at *10-11. Accordingly, any allegations regarding Dr. Riccardi's sexual relations and any attempts to portray her as sexually aggressive must be precluded as irrelevant, not probative, and highly prejudicial.

III. CONCLUSION

Based on the foregoing, Dr. Riccardi's motion *in limine* to preclude Dr. Kessler from introducing evidence regarding Dr. Riccardi's past sexual relations and disagreements with colleagues while working for a different employer during a different time period should be granted.

Dated: White Plains, New York
September 26, 2007

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2007, a copy of the Memorandum in Support of Plaintiffs Motion In Limine To Exclude Evidence of Plaintiffs Alleged Prior Bad Acts And Sexual History At Trial was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt including:

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Parties may access this filing through the Court's electronic filing system.

/s/ William D. Frumkin
William D. Frumkin

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DR. PATRIZIA RICCARDI,	)
Plaintiff,	)
v.	) CIVIL ACTION
VANDERBILT UNIVERSITY	) No.: 3:06-cv-0605
MEDICAL CENTER, and	) No.: 3:06-cv-0615
DR. ROBERT KESSLER, and	)
DR. MARTIN SANDLER,	) Judge Thomas
individually,	) Wiseman
Defendants.	)
	) Magistrate
ROBERT M. KESSLER,	) Judge Joe
Plaintiff,	) Brown
v.	)
DR. PATRIZIA RICCARDI,	) FILED UNDER
Defendant.	) SEAL

DR. ROBERT KESSLER'S MOTION TO ADMIT EVIDENCE OF DR. PATRIZIA RICCARDI'S PAST SEXUAL BEHAVIOR AND SEXUAL PREDISPOSITION

Pursuant to Rule 412 of the Federal Rules of Evidence and the order of this Court, Dr. Robert Kessler ("Kessler") moves the Court to admit evidence of Dr. Patrizia Riccardi's past sexual behavior and sexual predisposition.

In this case, Dr. Riccardi claims that Dr. Kessler stalked and harassed and frightened her and denies that she had a sexual relationship with him. Dr. Kessler intends to offer proof regarding his relationship with Dr. Riccardi to dispute these essential elements. That proof will include his own testimony that Dr. Riccardi shared intimate, sexual details of her life and proof from non-parties that the relationship between Dr. Riccardi and Dr. Kessler was close. Based on such proof, a jury could conclude that Dr. Riccardi did not consider Dr. Kessler to be a stalker or harasser.

A. Dr. Riccardi waived any objection to admission of evidence of her sexual behavior and sexual predisposition.

A party can waive rights to challenge introduction to Rule 412 evidence at trial. See *Beard v. Southern Flying J, Inc.*, 266 F.3d 792 (8th Cir. 2001). See *United States v. Ramos*, 861 F.2d 461, 468-69 (6th Cir. 1988)(when party opens subject that may not be strictly relevant, she cannot complain if opponent introduces evidence on the same subject). The Rule 412 objective of safeguarding the alleged victim from embarrassing disclosure is not advanced by permitting a victim to use Rule 412 as a sword and shield. *See* Fed.R.Evid 412 (advisory committee notes).

Here Dr. Riccardi's counsel spent substantial portions of Dr. Kessler's three-day deposition addressing Dr. Riccardi's sexual behavior. For

example, by page 32 of Dr. Kessler's deposition,[2] Dr. Riccardi's counsel was asking how many times he had sex with Dr. Riccardi and whether he saw her completely naked. Kessler Dep. 34, 227, whether Dr. Kessler fondled Dr. Riccardi's breasts, Kessler Dep. 50, what special positions Dr. Riccardi preferred, Kessler Dep 50-51, and methods of birth control, including the female condom. Kessler Dep. 53. When Dr. Kessler's counsel finally objected, Dr. Riccardi's counsel represented to the Magistrate Judge that "the central issue in this case, Your Honor, is whether they had sex or they didn't." Kessler Dep. 352 Before and after that conversation, Dr. Riccardi's counsel addressed issues such as:

- The color of Dr. Riccardi's pubic hair (Kessler Dep 85);
- Whether Dr. Riccardi shaved her legs (Kessler Dep 85);
- How many times Dr. Riccardi and Dr. Kessler had sex (Kessler Dep. 200)
- Dr. Riccardi's abortions and discussions with Dr. Kessler about her abortions (Kessler Dep 53-63, 298-315);
- Use of the apartment of friend of Dr. Kessler to have sex (Kessler Dep 348); and
- Where and when Dr. Riccardi and Dr. Kessler had sex (Kessler Dep. 358-70).

The questions about sex went on for pages and are included in all three volumes of Dr. Kessler's

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[2] Dr. Riccardi filed Dr. Kessler's entire deposition at Docket Entry No. 170, App.

deposition. For example, the questions and testimony on pages 221-235 are solely about sex, including various sex toys and undergarments. Dr. Riccardi's counsel even asked Dr. Kessler whether he had "steamy sex" with a former classmate in Atlanta. Kessler Dep. 285-87. Dr. Riccardi's counsel also asked Dr. Kessler if Vanderbilt's investigator questioned him about Dr. Riccardi's body and preferred sexual positions. Kessler Dep. 67-68.

Throughout the depositions, Dr. Riccardi's counsel questioned Dr. Kessler about details contained in the chronology that Dr. Kessler prepared for Vanderbilt in August 2005. The chronology contains multiple references to Dr. Riccardi's sexual affair with Dr. Kessler and others.[3] Dr. Riccardi introduced Dr. Kessler's chronology as an exhibit in her response to Dr. Kessler's motion for partial summary judgment. She gave a copy of Dr. Kessler's chronology to her expert who examined Dr. Kessler. Dr. Riccardi's expert specifically refers to the chronology in his report. Dr. Riccardi even filed all three volumes of Dr. Kessler's deposition, with exhibits - including the chronology - with the Court. Therefore, the chronology and all of Dr. Kessler's testimony about his sexual relationship with Dr. Riccardi have been made part of the public record by Dr. Riccardi.

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[3] Dr. Riccardi's counsel's examination of Dr. Kessler was not limited to details contained in the chronology but rather explored Pr.Riccardi's sexual history and propensities in detail.

The record thus plainly demonstrates that Dr. Riccardi has waived her right to object to any Rule 412 proof at trial, especially proof that corresponds with matters that her counsel covered so extensively in Dr. Kessler's deposition. It would be patently unfair to permit Dr. Riccardi to deny that she and Dr. Kessler had a sexual relationship using this evidence and, at the same time, prohibit Dr. Kessler from offering proof to show what they did. The stringent requirements of admissibility are not justified to protect an alleged victim who herself has publicly disclosed intimate sexual details in Court filings for her own purpose. *See Beard,* 266 F,3d at 802.

B. In the Alternative, Proof of Dr. Riccardi's Sexual Behavior and Propensities because its Probative Value Substantially Outweighs the Danger of Harm or Unfair Prejudice to Dr. Riccardi.

Dr. Kessler intends to offer testimony of Dr. Robert Kessler, Dr.. Moisy Shopper,[4] Dr. James Patton, Dr. Martin Sandler, Mr. Craig Oxford, and Toronto police officers regarding Dr. Riccardi's past sexual behavior and sexual predisposition. *See*

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[4] Dr. Shopper is Dr. Kessler's expert witness, but can also testify as a fact witness to statements made to him by Dr. Riccardi. Dr. Shopper advised Dr. Riccardi that their conversation was not confidential Dr. Shopper's notes reflect that the disclosures that Dr. Riccardi made to him are similar tothose that she made to Dr. Kessler.

Sandlin Dep 114-15; Oxford 139-73; Patton Dep 37-39, 42-43; Nakhuda Dep. 14 & Ex. 1 (Docket Entry No. 144); Nevin Dep 52 & Ex. 1 (Docket Entry No. 144). Dr. Kessler also intends to question Dr. Riccardi about the same incidents to introduce notes and memoranda prepared by Dr. Kessler, Dr. Shopper and the Toronto police officers regarding Dr. Riccardi's sexual behavior and propensities. Dr. Kessler will also offer Dr. Riccardi's testimony that she had sex with married men. Riccardi Dep. 599 (This testimony is relevant because she claims that she did not have sex with Dr. Kessler because he was married. Riccardi Dep. 137). The incidents[5] include:

1. Incidents in 2004 and 2005 when Dr. Riccardi kissed and had sexual intercourse and oral sex;

2. Conversations between Dr. Kessler and Dr. Riccardi regarding such intimate matters such as female condoms, a "perfect night of sex," and sex toys;

3. Dr. Riccardi's request that Dr. Kessler purchase her gifts, including jewelry, sex toys and money;

4. Dr. Riccardi's request that Dr. Kessler assist her after Dr. Riccardi's altercation with Dr. Meltzer;

5. Dr. Riccardi's discussions about her relationship with men, including her husband, Raun Amir, unnamed men, her Italian attorney;

6. Dr. Riccardi's statements to Dr. Kessler that she was pregnant;

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[5] All of these matters do not fall under rule 412.

7. Dr. Riccardi's statements to Dr. Kessler about having abortions;

8. Dr. Riccardi's request for reimbursement for an abortion;

9. July 2004 incidents when Dr. Riccardi and Dr. Kessler had sexual intercourse, shopped and went sightseeing in and around Vancouver;

10. Dr. Riccardi's discussions with Dr. Kessler about telephoning her in Italy;

11. Dr. Riccardi's attacks of Dr. Kessler in October 2004 and May 2005;

12. Dr Riccardi's decoration of Dr. Kessler's office;

13. Dr. Riccardi's discussion with Dr. Kessler as they traveled to Toronto in June 2005;

14. Dr. Riccardi's physical contact with Dr. Kessler on June 19, 2005;

15. Dr. Riccardi's conversations with Dr. Kessler before and during dinner on June 20, 2005;

16. Craig Oxford testimony about the bed sheets in the condo used by Dr. Riccardi and Dr. Kessler (Oxford Dep. 139-73);

17. Testimony from Dr. Patton and Dr. Sandler about Dr. Riccardi's flirtatious actions with Dr. Kessler while preparing for talks in Toronto (Patton Dep. 37-39, 42-43; Sandler Dep. 114-15); and

18. Testimony from Toronto police officers, including notes of their interview with Dr. Riccardi in which she told them that Dr. Kessler kissed her and touched her on the bottom during dinner and it was OK with her. Nakhuda Dep. 14 & Ex. 1; Nevin Dep. 52 & Ex. 1.

The proof generally falls into four categories: (1) Dr. Kessler's testimony of statements made by Dr. Riccardi to him, ranging from graphic sexuality to flirtations; (2) Dr. Kessler's testimony of sexual conduct, including sexual intercourse, with Dr. Riccardi; (3) testimony of Dr. Shopper that Dr. Riccardi discussed her sexual behavior with him in the context of her mental examination for preparation of his expert report; and (4) testimony of Craig Oxford, Dr. Patton, and Toronto police officers regarding their observation of the relationship between Dr. Riccardi and Dr. Kessler.

Rule 412 of the Federal Rules of Evidence governs the admissibility of evidence of sexual behavior and sexual predisposition of victims in civil and criminal cases. In a civil case, "evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and unfair prejudice to any party." Fed.R.Evid. 4012(b)(2). Before admitting such evidence, the court must conduct a hearing in camera and afford the alleged victim an opportunity to be heard.[6]

Rule 412 is designed to "safeguard the alleged victim against the invasion of privacy, potential

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[6] Rule 412 requires that the motion for admission of this evidence be filled ten days prior to trial. The Court waived that requirement and directed Dr. Kessler to file this motion on Monday, October 1, 2007.

embarrassment, and sexual stereotyping that is associated with public disclosure of intimate sexual details." Fed.R.Evid 412 (advisory committee note)(1994 amendment).

The United States Supreme Court has acknowledged that there is no "per se rule" against the admissibility of an alleged victim's sexually provocative speech in determining whether she found particular sexual advances unwelcome. *Meritor Savings Bank, FSB vs Vinson*, 477 U.S. 57, 69 (1986). *See also Wilson v. City of Des Moines*, 442 F.3d 637 (8th Cir. 2006)(affirming admission of evidence of plaintiff's workplace behavior and comments because it was highly probative of question whether alleged harassment was unwelcome). Courts have reasoned that public sexual behavior of a plaintiff at work is relevant to sexual harassment, especially the issue of whether the harassment was unwelcome. *See Browne v. Signal Mountain Nursery, L.P.* 286 F. Supp. 2d 94 (E.D. Tenn. 2003).

The relevance of particular evidence ay be minimized if it is unrelated to the alleged harasser. For example, in *Socks-Brunot v. Hirschvogel Inc.*, 184 F.R.D. 113 (S.D. Ohio 1999), on which Dr. Riccardi relies, the proffered proof was excluded because there was no connection with the alleged harasser. *See* 184 F.R.D. at 120-24. There was no proof that the alleged harasser, Charles Bentz, ever heard the plaintiff talk about her sexual relationship with a prior supervisor or was a part of a

conversation between the plaintiff and a co-worker regarding oral sex. Also, even though other employees referred to the plaintiff as flirtatious, there was no evidence that Bentz did. In other words, the proffered testimony was not probative of whether alleged sexual harassment by Bentz was unwelcome, because it had nothing to do with Bentz. *Id.* (As discussed below, all of the proffered testimony and proof relates directly to conduct and statements of Dr. Riccardi directed towards Dr. Kessler.)

In this case, Dr. Kessler's proof has strong probative value to essential elements and claims made by both parties. First, as Dr. Riccardi's counsel represented to the Court, one of the central elements in this case is whether Dr. Riccardi and Dr. Kessler had sex. Dr. Riccardi aggressively pursued discovery on this issue by eliciting substantial testimony from Dr. Kessler on Dr. Riccardi's sexual behavior propensities. Dr. Riccardi has filed the entire deposition, including exhibits. Second, Dr. Riccardi represented to Vanderbilt and others that Dr. Kessler harassed and stalked her and that she was afraid of him. The fact that Dr. Riccardi shared intimate, sexual details with Dr. Kessler refutes any claim the she perceived him as a stalker or harasser.

Third, the observations of third parties to the interaction between Dr. Riccardi and Dr. Kessler is also relevant to the public nature of their relationship. Dr. Patton will testify that Dr. Kessler and Dr. Riccardi seemed "very close, very close" and

"very excited," and that Dr. Riccardi wished Dr. Kessler a happy birthday in a presentation to an international professional conference in Toronto. Patton Dep. 37-39, 42-43. Dr. Shopper will testify that Dr. Riccardi disclosed details of her sexual history to him, consistent with the details to which Dr. Kessler will testify. Docket entry No. 173. Finally, the Toronto police will testify (based on their recollections and their contemporaneous notes) that Dr. Riccardi told them that Dr. Kessler kissed her and touched her on the bottom during dinner and that was OK with her. Nakhuda Dep 14 & Ex. 1 Nevin Dep. 52 & Ex. 1. All of this proof has unquestionably strong probative value, recognized by Dr. Kessler's counsel and counsel for Dr. Riccardi.

As noted above, courts have regularly acknowledged that evidence of sexual behavior and propensities can be relevant in sexual harassment cases to show welcomeness, that is, whether the alleged harasser's conduct was so unwelcome as to constitute a change in working conditions. This is not a sexual harassment case, but evidence of Dr. Riccardi's sexual behavior and propensity is also directed to the nature of her relationship with Dr. Kessler.

Therefore, based on this proof the jury could not conclude that that Dr. Riccardi was not afraid of Dr. Kessler and Dr. Riccardi had sexual intercourse, thus disbelieving Dr. Riccardi's version of events in Toronto. This analysis of the relationship of Dr.

Kessler's proffered proof to the issues in this case demonstrates that it has strong probative value.

That strong probative value is substantially and overwhelmingly outweighs any harm or undue prejudice to Dr. Riccardi. As noted above, the record is replete with proof generated by Dr. Riccardi regarding her sexual behavior. Exclusion of the proffered evidence does not advance any of the goals of Rule 412. Dr. Riccardi has disclosed the sexual details to expert psychiatrists retained by her and Dr. Kessler, and has made those details part of this Court's record by filing Dr. Kessler's deposition, including photographs of her body as an exhibit for trial. Those disclosures, all for the purpose of advancing her own interests in this case, do no justify prohibiting Dr. Kessler from using the same proof.

For these reasons, Dr. Kessler requests that the Court permit him to introduce the proffered evidence. Alternatively, Dr. Kessler requests the Court to postpone ruling on the admissibility of this proof until trial and permit Dr. Kessler to raise further objections based on the specific proof that Dr. Riccardi offers.

Respectfully submitted,
/s/ Kevin H. Sharp

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2007, a copy of foregoing was filed under seal electronically. Notice of this filing will be sent by facsimile to:

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This the 1st day of October, 2007.

/s/ Kevin H. Sharp
Kevin H. Sharp

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

DR	)
PATRIZIA RICCARDI	)
PLAINTIFF,	)
VS	) CASE NOS
VANDERBILT UNIVERSITY	) 3:06-CV-0605
MEDICAL CENTER, ET AL	) 3:06-CV-0615
DEFENDANT.	)

BEFORE THE HONORABLE THOMAS WISEMAN
PARTIAL TRANSCRIPT OF PROCEEDINGS
OCTOBER 11, 2007
VOLUME III OF V

APPEARANCES:

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1 freezing there, "Patrizia," right?
2 A. This is correct.
3 Q. An hour later -- an hour and four minutes
4 later. And then you send him the next e-mail. You
5 just send him an e-mail with a big smiley face.
6 You're happy with his answer, right?
7 A. I didn't see the answer.
8 Q. Well, you've just sent him this e-mail that's a
9 response to the last one. No subject line, sent --
10 A. I don't know. I didn't see his answer.
11 Q. well, why do you think you were sending him
the
12 big smiley-face emoticon?
13 A. I don't know; might have been an answer to
14 something. I don't know. I didn't see his answer.
15 Q. whatever it was, what were you -- what
16 information were you trying to convey with that
17 little symbol there to your alleged stalker?
18 A. I -- as I said, since I didn't see the answer,
19 I don't know why I send that.
20 Q. Well, is that a message of, "Dr. Kessler,
21 please don't kill me"? what is that?
22 A. It's trying to have a normal relationship with

23 my boss, as much as I could.
24 Q. It's true, is it not, that you told
25 Dr. Kessler, on occasion, about the various men that

you had slept with?
A. No.
Q. Never told him about any of them?
A. Yeah.
Q. On occasion, you told him about the men you had
slept with, correct?
MR. FRUMKIN: objection, Your Honor. It's
a--
A. That's --
MR. FRUMKIN: -- mischaracterization of
the witness's testimony. She never testified to
that. She described that she had these
relationships.
THE COURT: Overruled.
A. What is the question?
Q. (By Mr. Sharp) The question was that: On
occasion, you told Dr. Kessler about men that you
had slept with in the past, correct?
A. It's incorrect.
Q. You never told him about any men you'd slept
with in the past?
A. I could never possibly say something like this.
I said men with whom I had relationship, and
they
were long relationship.
Q. And all the men you told him about were long

relationships?
A. Yes, yes.
Q. were they sexual relationships?
A. They were relationship.
Q. were they sexual relationships, ma'am?
A. They were love relationship.
Q. were they sexual relationships?
A. Of course, sex was involved.
Q. Just answer the question. And you told
Dr. Kessler that he was number 38?
A. I never said that. I never, never said that.
Q. Because that wasn't his number?
A. Because it is not true.
Q. You told the jury yesterday about a gentleman
that you had -- the only -- correct me if I'm
wrong -- the only married gentleman that you had had
a sexual relationship with. And do you recall that
testimony?
A. I did.
Q. And what was that gentleman's name?
A. Iube.
Q. what was his full name?
A. Iube Raja.
Q. And that was the guy -- you explained to us
yesterday how he was the son of a Raja, correct?

A. Yes, that is correct.
Q. Okay. And you told Dr. Kessler about this romantic, sexual relationship you had with Dr. Raja, correct?
A. This is correct.
Q. And you told this jury that that was the only married man that you told -- that you had had a sexual relationship with, I mean, besides your husband, correct?
A. This is correct.
Q. Okay. Who's Dr. Spotafora (phonetic)?
A. He was my boyfriend for five years, and we also worked together for two years when we moved to Geneva.
Q. Now, was this when your husband was in Geneva, or was this before or after that?
A. Before.
Q. Okay. Before your husband came to Geneva. And you told Dr. Kessler about that, correct?
A. As I testified yesterday, this man is a famous scientist.
Q. Did you tell Dr. Kessler about that?
A. Yes.
Q. Okay. And, in fact, Dr. Spotafora was married, was he not?

A. That is not true.
Q. Do you recall testifying that he was married at the time?
A. It is not true. He was separated. He was not married. He was separated, and I was not the first woman he had after his separation from his wife.
Q. Well, I'm sorry. What does that have to do with anything?
A. You asked me if he was married.
Q. Yes, ma'am.
A. He was legally separated; legally separated. He had to wait five years in order to get a divorce. And he later divorced his wife, but it was not for me. It was not for me. when I met him, he was already separated, and he had a woman prior to me.
Q. He wasn't divorced, was he? He was another married man that you told Dr. Kessler you'd had a sexual relationship with, correct?
A. He was legally separated.
THE COURT: All right.
Q. (By Mr. Sharp) Okay. And you also told Dr. Kessler about your sexual relationship with a man named Ron Amir (phonetic), correct?
A. As I testified yesterday, Ron was on my save screen [sic] and my --

Q. I didn't -- ma'am, I didn't ask if he was on your screen-saver.
A. Yes. I didn't tell him. He saw him.
Q. is it your testimony that you never told Dr. Kessler about any of your sexual encounters with Mr. Amir?
A. No, no.
Q. You also told Dr. Kessler about a doctor you worked with named Rajan (phonetic), correct?
A. He came to visit --
Q. Did you tell Dr. Kessler --
A. No. He saw him in Nashville, because he came to visit me.
Q. And you, in fact, did have a sexual relationship with Dr. Rajan, correct?
A. I dated him four times. That's it.
Q. And you told Dr. Kessler about that, correct?
A. This person came to visit in Nashville.
Q. You told Dr. Kessler about the relationship, correct?
A. I told him'I met this person in New Haven, and I dated him four few times. That's all he knew.
Q. And this was somebody that you worked with at Yale, correct?
A. We did not really work together. He was a resident, and I was a fellow at that time. And when I dated him, he had left Yale.
Q. And then you mentioned yesterday, in passing, that you had had another sexual relationship when you had gone over to Italy. And I believe it was

with your attorney, perhaps?
A. No.
Q. Who was this gentleman; this friend --
A. I don't have an attorney in Italy.
Q. This -- this friend of yours that you mentioned wasn't a notary or an attorney over there?
A. This was someone I'd been knowing for 17 years,
as I testified yesterday.
Q. And you said you went back to -- to Italy, had a sexual encounter with this gentleman, correct?
A. That is correct.
Q. What trip was that?
A. I went to Italy to -- for a couple of weeks, I guess.
Q. Okay. When? What month and year?
A. That was October.
Q. Of?
A. '04.
Q. Was this before or after you allege Dr. Kessler said he was going to kill you?

A. As I said before, I cannot recall.
Q. You don't know whether or not your trip to Italy was before or after your mentor allegedly said he was going to kill you?
A. No. I don't recall. I already said it.
Q. But when you returned, you did tell Dr. Kessler that you had had this sexual encounter with this man?
A. I did not say sexual encounter.
Q. How did you say it?
A. I said I had someone in Italy; that he had to stop to pursuing me.
Q. How did you indicate to him the nature of the relationship?
A. I never did.
Q. Well, then, any idea how he knew?
MR. SHARP: Objection to form.
THE COURT: Overruled.
A. I don't know. I think that he made it up.
Q. (By Mr. Sharp) Well, it was true, wasn't it?
A. Yeah, but I never told him. I just said, "I have a man in Italy. You have to stop pursuing me."
Q. So you think it's just a lucky guess on Dr. Kessler's part? He didn't get that from you?
THE COURT: Go ahead. Ask something else.

Appendix E

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

PATRIZIA RICCARDI,	)
Plaintiff,	)
V.	) CASE NO.
VANDERBILT UNIVERSITY	) 3:06-0605
MEDICAL CENTER,	)
ROBERT KESSLER and	)
MARTIN SANDLER,	)
Defendant.	)

TRANSCRIPT OF PROCEEDINGS

DATE: October 17, 2007
TIME: 9:00 A.M.
BEFORE: HONORABLE THOMAS WISEMAN
And a Jury

COURT REPORTER:
PEGGY G. TURNER
OFFICIAL COURT REPORTER
801 BROADWAY, ROOM. A-837
NASHVILLE, TENNESSEE 37203
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APPEARANCES:

For the Plaintiff:
William D. Frumkin
Kathryn E. White
White Plains, NY

For the Defendant:
Kevin Sharp
Stacey Middleton
Nashville, TN

1 Compensatory Damages, where we talk about suffering arising
2 from physical injury, mental or emotional pain and suffering,
3 emotional distress, mental anguish, et cetera. And again,
4 under Pain and Suffering Defined, there is a reiteration of
5 the damages from mental injury. So your suggestion or request
6 is denied.
7 Now then, page 13 will be deleted. Page 14 will be
8 deleted. Page 15 down to five, defamation will be deleted and
9 five will be renumbered. Defamation will be renumbered.
10 MR. FRUMKIN: Your Honor, I'm sorry to interrupt. I
11 apologize for the lateness of this. I guess sort of caught up
12 in getting ready for the closing argument. Ms. White just
13 passed me a note I think has some relevance, and I want to
14 just bring it to the court's attention.
15 with respect to the defamation claim, Dr. Kessler
16 testified that when he looks at people, he's afraid of what
17 they are thinking. But he hasn't testified to anything else
18 about how he has been harmed. He still has his job; he is

19 still doing grants. There is no evidence in the record about
20 his reputation being hurt other than his supposition that when
21 people look at him, he doesn't know what they are thinking.
22 He said that he got an e-mail from a friend, but the friend
23 didn't testify. I mean, there has been really no —
24 absolutely no corroboration that this man's reputation has
25 been hurt other than he wonders what people think. And I'm

1 sorry for the lateness of the application, Your Honor, but I
2 don't think the case can go to the jury without being able to
3 demonstrate that he suffered any damage, which he didn't. I
4 apologize for the lateness, Your Honor,
5 The Court: Okay.
6 MR. FRUMKIN: May I add one other thing?
7 THE COURT: Wait just a minute. I have tried
8 defamation cases. There is a distinction between the types of
9 defamation that require proof of actual injury. And one is a
10 per se type of ruling, and the other requires proof of —
11 refresh my memory on that.
12 MR. FRUMKIN: I'm saying the per se, I think you don't

13 have to show the damages.
14 The Court: Yes.
15 MS. WHITE: Your Honor, I believe under Tennessee is state law that there is no distinction between a per se and a
17 straight-up defamation claim, that in any event, you have to
18 show damages. And here, Dr. Kessler did not show those
19 damages. In any event, any damages would be speculative
20 because of his self proclamation that-he is an admitted
21 adulterer.
22 MR. sharp: Your Honor, the cases that I have cited
23 here, the *Saffro* case and the others, any defamatory statement
24 that tends to prejudice his reputation and standing in the
25 community, which he can testify to, is actionable, and damages

1 can be awarded on that. And this *Saffro* case talks to that.
2 it's a case with an attorney in east Tennessee who had some
3 defamatory things about her, and she was allowed to testify as
4 to how that had hurt her reputation in the community.
s And I believe that Dr. Kessler, in addition to saying

e that one thing, also told about the damage that this would
7 have in the academic community and how reputation is
8 everything, and this would damage it.
9 THE COURT: But Ms. White insists that under Tennessee
10 law, actual proof of actual damage is required.
11 MR. SHARP: And Your Honor, that's what I'm saying. I
12 don't believe that's correct. And these are Tennessee Court
13 of Appeals cases, one from this year, that don't require that.
14 They don't require him to have someone coming in here and say,
15 i believe that —
16 The COURT: I think less of him, or I believe --
17 Mr. Sharp: Right. Although you had Mrs. Jo Ann
18 Fields on the stand, who said the things that she now felt
19 about Dr. Kessler, and how she felt about that after Dr.
20 Riccardi told her.
21 MS. White: That's absolutely false.
22 Mr. Frumkin: She witnessed herself the grant, because
23 he switched out the grant, that's why she lost respect for
24 him. But Your Honor, he is allowed to testify to what he
25 testified to, but he didn't testify to anything to show that

1 he was hurt, other than in his own mind. He didn't say,
2 someone told me this, or I've been denied going on this
3 publication, I've been denied going on that publication, I've
4 been denied this grant. There has been no actual damage.
5 Just in his own mind, because he's embarrassed. But that's
6 his issue.
7 MR. SHARP: Your Honor, these cases show — and I will
8 dig them out, because I brought them over — that you don't
9 need actual injury, if there is a false and reckless disregard
10 for the truth, if you lie about it. But Dr. Fields testified
11 that this was after Dr. Riccardi told her about the incident.
12 The COURT: If you have such a case, pass it in and
13 let me read it.
14 MS. WHITE: Your Honor, I'd just like to bring to the
15 court's attention, in our pretrial brief, we cited cases that
16 talk about the fact that the burden to show damages is on the
17 plaintiff in a defamation case.
18 THE COURT: Correct.

19 MS. WHITE: So Mr. Sharp's interpretation of the law
20 is inaccurate. And also, with respect to Ms. Field's
21 testimony, she clearly testified that her opinion of Dr.
22 Kessler changed because of his conduct in staring at Dr.
23 Riccardi's breasts. And it was after that point that she lost
24 respect for him. It was not because of anything that Dr.
25 Riccardi had said. It was because of what had happened prior

1 to that. Because of Dr. Kessler's own actions.
2 the COURT: Did she not attribute it also to the
3 adultery? Her knowledge of the adultery?
4 MS. WHITE: No, she did not. I asked her clearly, did
5 your opinion of Dr. Kessler change at any time? And she said,
6 yes. And she said, it did in the beginning of January 2005
7 when I watched Dr. Kessler stare at Dr. Riccardi's breasts for
8 ten minutes straight.
9 THE COURT: All right. Everybody sit down and relax
10 while I read this.
11 All right. Here's the controlling language.
12 *The issue is whether the record contains any material*

13 *evidence of the types of injury outlined in Goertz. If there*
14 *is material evidence on any of the elements of damages, the*
15 *cause must be submitted to the jury.*
16 Now, the elements are listed above in the same
17 paragraph, as follows.
18 *indeëd, the more customary types of actual harm*
19 *inflicted by defamatory falsehood include impairment of*
20 *reputation and standing in the community, -*
2i That's only one.
22 *-- personal humiliation, and mental anguish and*
23 *suffering.*
24 Now, certainly, the doctor can testify as to his
25 personal humiliation, and as to his mental anguish and
1 suffering, as Dr. Riccardi has done in hers. Those are
2 matters which must be submitted to the jury.
3 MS. WHITE: Your Honor, if I may, I believe that it's
4 very speculative to submit that to the jury, because, is the
5 personal anguish, anguish that he testified to, because he
6 says he is this self-proclaimed admitted adulterer, and people
7 are looking at him because of that in a bad light?
8 THE COURT: Well, that's certainly an argument that
9 you can and should present to the jury. But, just as Dr.

10 Riccardi has been allowed to testify as to her personal
11 humiliation, and her personal insult to her persona and her
12 psychological injury, Dr. Kessler can do the same. So your
13 objection is overruled. It will be submitted to the jury.
14 MR. FRUMKIN: Just note our exception in the record.
15 THE COURT: Yes, sir. Your exception is noted.
16 You know, I grew up in the law having to say that
17 every time, because that used to be the rule, if you didn't
18 note your exception, you couldn't preserve it. But it's no
19 longer necessary.
20 Mr. FRUMKIN: Okay. I'm just making double extra
21 sure.
22 The COURT: Yes, that's all right. I used to do it
23 just as a matter of course, and I probably still would if I
24 were sitting in your position.
25 MR. FRUMKIN: Thank you.

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DR. PATRIZIA RICCARDI,	)	
Plaintiff,	)	
v.	)	Civil Action No.
VANDERBILT UNIVERSITY	)	3:06cv0605
MEDICAL CENTER,	)	
and DR. ROBERT KESSLER,	)	
and DR. MARTIN SANDLER,	)	
individually,	)	
Defendants.	)	

CASES CONSOLIDATED
Judge Thomas A. Wiseman, Jr.

DR. ROBERT KESSLER,	)	
Plaintiff,	)	
v.	)	Civil Action No.
DR. PATRIZIA RICCARDI,	)	3:06cv0615
Defendant	)	

ORDER

Before the Court is Defendant Patrizia Riccardi's Renewed Motion for Judgment as a Matter of Law and alternative motion for remittitur or a new trial (Doc. No. 245) in Civil Action No. 3:06cv0615. Plaintiff Robert Kessler has filed his response in opposition to the motion (Doc. No. 251). In her motion, Dr. Riccardi seeks judgment in her

favor as a matter of law on Dr. Kessler's defamation claim on the grounds that Dr. Kessler failed to present evidence of actual damages resulting from the defamatory statements, as required by Tennessee law. Alternatively, Dr. Riccardi requests that the damages awarded for pecuniary injury ($500,000) be set aside on the grounds that there was no evidence presented from which a jury could conclude that Dr. Kessler suffered any actual monetary losses resulting from the defamation. In addition, Dr. Riccardi requests a new trial or remittitur of the amount of damages awarded by the jury on Dr. Kessler's defamation claim for injury to reputation and mental and emotional suffering ($1,500,000) on the grounds that the award is not supported by the evidence and is clearly excessive.

Dr. Riccardi also requests that the Court set aside the $5,000 awarded by the jury to Dr. Kessler for actual monetary damages associated with battery on the grounds that, again, there was no evidence from which a reasonable jury could conclude that Dr. Kessler suffered any such monetary damages.

Finally, Dr. Riccardi seeks remittitur or a new trial on the amount of punitive damages awarded on the grounds that such amount, $950,000, is grossly excessive.

As explained in greater detail in the accompanying Memorandum Opinion, the Court finds that there is evidence in the record to support the jury's finding that Dr. Kessler suffered actual

damages resulting from defamation by Dr. Riccardi. However, the Court finds that there was not sufficient evidence in the record to support the awards of actual monetary damages of either $500,000 arising from the defamation or $5,000 arising from battery.

Further, the Court finds that the $1,500,000 awarded for damage to reputation and emotional pain and suffering and the $950,000 awarded in punitive damages are both in excess of the range supported by the proof and so excessive as to shock the conscience, and must be reduced or a new trial ordered.

Consequently, the motion for judgment as a matter of law on the defamation claim is **DENIED**, but the motion to set aside the award of monetary damages in the amount of $500,000 associated with defamation is **GRANTED**. The motion to set aside the award of$5,000 in monetary damages associated with battery is likewise **GRANTED**.

Dr. Riccardi's motion for a new trial on the issue of compensatory damages for defamation is conditionally **DENIED**, subject to Dr. Kessler's acceptance of a remittitur of the compensatory damages, from $1,500,000 to $250,000.

Dr. Riccardi's motion for a new trial on the issue of punitive damages is likewise conditionally **DENIED**, subject to Dr. Kessler's acceptance of a remittitur of the punitive damages, from $950,000 to

$250,000.

Dr. Kessler shall and is hereby **ORDERED** to file a notice with the Court within thirty (30) days of entry of this Order indicating whether or not he accepts the Court's suggested remittitur of both the compensatory damages amount and the punitive damages amount. If he declines to accept either or both of the suggested remittiturs, a new trial solely on the issue of compensatory and/or punitive damages will be ordered, as applicable.

It is so **ORDERED**.

Thomas A. Wiseman, Jr.
Senior U.S. District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DR. PATRIZIA RICCARDI,	)	
Plaintiff,	)	
v.	)	Civil Action No.
VANDERBILT UNIVERSITY	)	3:06cv0605
MEDICAL CENTER,	)	
and DR. ROBERT KESSLER,	)	
and DR. MARTIN SANDLER,	)	
individually,	)	
Defendants.	)	

CASES CONSOLIDATED
Judge Thomas A. Wiseman, Jr.

DR. ROBERT KESSLER,	)	
Plaintiff,	)	
v.	)	Civil Action No.
DR. PATRIZIA RICCARDI,	)	3:06cv0615
Defendant	)	

MEMORANDUM OPINION

Before the Court is Defendant Patrizia Riccardi's Renewed Motion for Judgment as a Matter of Law and alternative motion for remittitur or a new trial (Doc. No. 245) in Civil Action No. 3:06cv0615. Plaintiff Robert Kessler has filed his response in opposition to the motion (Doc. No. 251),

and Dr. Riccardi has filed a Reply brief (Doc. No. 256).

In her motion, Dr. Riccardi seeks judgment in her favor as a matter of law on Dr. Kessler's defamation claim on the grounds that Dr. Kessler failed to present evidence of actual damages resulting from the defamatory statements, as required by Tennessee law. Alternatively, Dr. Riccardi requests a new trial or remittitur of the amount of damages awarded by the jury on Dr. Kessler's defamation claim for injury to reputation and mental and emotional suffering on the grounds thither award is not supported by the evidence and is clearly excessive. In addition, Dr. Riccardi requests that the damages awarded for pecuniary injury—$500,000—be set aside on the grounds that Dr. Kessler presented no evidence from which a jury could reasonably conclude that he suffered any actual monetary losses resulting from the defamation. In addition,

Dr. Riccardi also seeks to set aside the $5,000 awarded by the jury to Dr. Kessler for actual monetary damages associated with battery on the grounds that, again, there was no evidence from which a reasonable jury could conclude that Dr. Kessler suffered any such monetary damages.

Finally, Dr. Riccardi seeks remittitur or a new trial on the amount of punitive damages awarded by the jury on the grounds that such amount, $950,000, is grossly excessive.

As set forth below, the Court finds that there is evidence in the record to support the jury's finding that Dr. Kessler suffered actual damages resulting from defamation by Dr. Riccardi. However, the Court finds that there is not sufficient evidence in the record to support the awards of actual monetary damages of either $500,000 arising from the defamation or $5,000 arising from battery. Further, the Court finds that the $1,500,000 awarded for damage to reputation and emotional pain and suffering and the $950,000 punitive damages award excessive and must be reduced or a new trial ordered. The Court will therefore suggest remittitur of those amounts and will conditionally deny Dr. Riccardi's motion for a new trial on the various damages issues, subject to Dr. Kessler's acceptance of the suggested remittitur amounts as set forth herein.

I. BACKGROUND

Trial of this matter began on October 9, 2007 and ended on October 18, 2007 after the jury had returned a verdict in favor of Dr. Kessler and against Dr. Riccardi on both Dr. Riccardi's claims against Dr. Kessler and Dr. Kessler's claims against Dr. Riccardi. Judgment was entered on October 25, 2007. On October 17, 2007, at the conclusion of all proof, Dr. Riccardi made a Rule 50(a) motion for judgment as a matter of law as to Dr. Kessler's defamation claim on the grounds that Dr. Kessler had failed to proffer material evidence demonstrating that he sustained actual injury

resulting from any allegedly defamatory statements by Dr. Riccardi. The Court denied the motion and the jury returned a verdict awarding Dr. Kessler $2,000,000 in damages on his defamation claim (including $500,000 for actual monetary damages for "property damage, medical expenses, inconvenience, lost work time, etc." and $1,500,000 in compensatory damages for damage to reputation and standing in the community, emotional distress, emotional pain, mental anguish, loss of enjoyment of life, humiliation and embarrassment); $15,000 on his battery claim (including $5,000 for actual monetary or out-of-pocket damages); and $10,000 on his assault claim.

The jury also determined that Dr. Kessler was entitled to punitive damages. On October 18, 2007, after additional proof was presented, the jury awarded Dr. Kessler $950,000 in punitive damages.

Dr. Riccardi has now filed her motion for judgment as a matter of law and alternative motion for a new trial or remittitur.

II. STANDARD OF REVIEW

Under Rule 50 of the Federal Rules of Civil Procedure, the Court may grant judgment against a party who has been fully heard on an issue during a jury trial if the Court "finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50 (aX1). In a diversity action, review of a Rule 50 motion based on sufficiency of the evidence is

governed by the forum state's law. *K&T Enters, Inc. v. Zurich Ins. Co.*, 97 F.3d 171, 176 (6th Cir. 1996) (distinguishing between standard of review applied to Rule 50(b) motions in diversity cases raising issues of law and issues of evidentiary sufficiency). Under Tennessee law, which applies in this case, the reviewing court must "take the strongest legitimate view of the evidence in favor of the opponent of the motion, allow all reasonable inferences in his or her favor, discard all countervailing evidence, and deny the motion where there is any doubt as to the conclusions to be draw [n] from the whole evidence." *Arms v. State Farm Fire &Cas. Co.*, 731 F.2d 1245, 1248 (6th Cir. 1984) (quoting *Holmes v. Wilson*, 551 S.W.2d 682, 685 (Tenn. 1977)). "A verdict should not be directed during, or after, trial except where a reasonable mind could draw but one conclusion." *Id.* (quoting *Holmes*, 551 S.W.2d at 685).

In ruling on a renewed motion for judgment as a matter of law under Rule 50(b), the Court may allow the jury's verdict to stand, direct entry of judgment as a matter of law or order a new trial. Judgment as a matter of law is appropriate when the plaintiff fails to present legally sufficient evidence as to one of the necessary elements of his cause of action. *Eaton v. McLain*, 891 S.W.2d 587, 590-91 n.3 (Tenn. 1994).

III. DR. RICCARDI'S MOTION

A. Motion for Judgment as a Matter of Law as to Defamation Claim

It is now well established in Tennessee law that a party seeking to establish a defamation claim must plead and prove actual injury resulting from the alleged defamatory words in order to recover damages. *Memphis Pub'g Co. v. Nichols*, 569 S.W.2d 412, 418-19 (Tenn. 1978).[7] The actual injury requirement was discussed in *Gertz* and has been repeated subsequently in numerous Tennessee defamation cases:

> We need not define "actual injury," as trial courts have wide experience in framing

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[7] The *Nichols* Court initially ***quoted Gertz v. Robert Welch, Inc.***, 418 U.S. 323, 349 (1974), as prohibiting presumed damages in cases involving "plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth." *Id.* at 349, *quoted in Nichols*, 569 S.W.2d at 416. The language used in *Nichols'* holding, however, was loose enough to be applied more broadly, as the Court appeared to opine that *Gertz* barred presumed damages in *all* defamation cases, even if knowledge of falsity or reckless disregard for the truth was proven. *Nichols*, 568 S.W.2d at 419 ("Since *Gertz* has held that presumed damages are no longer permissible, . . . [w]e hold, therefore, that the *Per se/per quod* distinction is no longer a viable one. The plaintiff must plead and prove injury from the alleged defamatory words, whether their defamatory meaning be obvious or not."). The Tennessee Court of Appeals has subsequently recognized that "[a]lthough *Nichols* does not specifically abrogate the Presumption of Damages Doctrine in cases asserting knowledge of falsity or reckless disregard for the truth—indeed *Gertz* would indicate otherwise—later appellate cases of this Court do." *Gulf Life Ins. Co. v. Whittle*, No., 1993 WL 410021 (Tenn. Ct. App. Oct. 14, 1993) (citing *Emerson v. Garner*, 732 S.W.2d 613 (Tenn. Ct. App. 1987); *Sullivan v. Young*, 678 S.W.2d 906 (Tenn. Ct. App. 1984); *Handley v. May*, 588 S.W.2d 772 (Tenn. Ct. App. 1979).

> appropriate jury instructions in tort actions. Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although there need be no evidence which assigns an actual dollar value to the injury.

Gertz, 418 U.S. at 349-50, *quoted in Nichols*, 569 S.W.2d at 416; *see also Saffo v. Kennedy*, No. E20060163 8COAR3CV, 2007 WL1215052, *5(Tenn. Ct. App. April 25, 2007); *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005); *Myers v. Pickering Firm, Inc.*, 959 S.W.2d 152,164 (Tenn. Ct. App. 1997) (among others, all quoting *Gertz*). In other words, the failure to prove special damages or out-of-pocket losses is not necessarily determinative, *Handley*, 588 S.W.2d at 776; instead, the issue is whether the record contains material evidence of impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering. *Id.* More recently, various Tennessee cases have held that evidence of "anger, mere annoyance or loss of peace of mind" is not sufficient to establish a compensable injury resulting from a defamatory utterance. *See, e.g., Dowlen v. Mathews*, M2001-03160- C0A-R3-CV, 2003 WL 1129558, at *5

(Tenn. Ct. App. Mar. 14, 2003); *Murray v. Lineberry*, 69 S.W.3d 560, 564 (Tenn. Ct. App. 2001); *Handley v. May*, 588 S.W.2d 772, 777 (Tenn. Ct. App. 1979).

On the basis of these cases, Dr. Riccardi argues in the present motion that the evidence Dr. Kessler presented at trial was insufficient to support the jury's award for impairment to reputation, humiliation, and mental anguish and suffering. The testimony of Dr. Kessler given at trial in support of his claims for damages arising from the defamation is as follows:

Q. And after you returned from Toronto back to Nashville, did you learn that Dr. Riccardi had told others her version of what had happened in Toronto?

A. I later learned that she had told other people, whom I knew, her version that I had assaulted and attempted to rape her.

Q. And how did that make you feel?

A. Well, she was - awful. I mean, I've never been accused - I've never been arrested for anything, any crime, up until this Toronto incident, my entire life. My reputation academically and personally was spotless. And now I'm being accused incessantly of being a rapist, of somebody who was assaulting somebody, accused of being a sexual harasser. You can imagine how it makes you feel. It makes you - it's extremely stressful, it's extremely stressful. You can deny it, but it's like a cloud that hangs over you and pushes you down and zaps your energy. And the

net result of this was I think I became depressed somewhat, anxious somewhat, my work productivity went way down. I've been unable to work to get my funding going. My academic career has suffered as a result. I'm not having funding. And, you know, you never know what other people think of you. Do they really believe her? Do they really believe what Dr. Riccardi said? And so you walk around with this spectre behind you. I was sleepless from stress. Previously, my work schedule had been, you know, I would get to work at about 8:30, and I would often go back to work in the evening, or I would work at home until 9:00, 10:00 in the evening, sometimes 11:00. I'm used to putting in 12 or 14 hour days. Now I go in to work, I get there at 8:30, and leave at 5:00. It's all I can do. I go home, and I can't work. My energy is gone. I don't sleep well at night.

(Tr. Transcript at 101.)

Any time you have a meeting now, you wonder how many of these people know about this, how many jobs, positions, am I not being considered for because people think I'm a rapist, a crazy person, a sexual harasser. It's a whispering campaign designed to destroy one's reputation.

In academics, you have a CV, but it's your reputation that counts. I don't think I could apply for a job anywhere else now and be considered with this AAUW [American Association of University Women] thing out. It's pretty public.

Appendix E

(Tr. Transcript at 102.)

Q. Now, you mentioned that you had some sleeping problems; correct?
A. Yes, sir.
Q. And how long did you have those?
A. They continue to this day.

(Tr. Transcript at 139.)

Q. And do you still work for Vanderbilt?

A. Yes, sir.

Q. Are you still an attending professor?

A. Yes.

Q. And are you still doing research and working on grants?

A. I'm still doing research, but my work on grants has decreased because of my inability to get my independent funding due to my lack of energy, just lack of - and my just stress due to this whole situation.

(Tr. Transcript at 139.)

A. What decreased my energy, sir, were the malicious allegations, spurious lies, that Dr. Riccardi made about me, published on the web, and has told

everyone she can find. I find it extremely stressful and depressing.

(Tr. Transcript at 140.)

A. What I am saying, sir, that Dr. Riccardi's lies and allegations have caused me great pain and suffering.

(Tr. Transcript at 141.)

Taking the strongest legitimate view of the evidence in Dr. Kessler's favor as required by the applicable standard of review, the Court finds that the jury reasonably inferred from this testimony that Dr. Kessler sustained compensable injuries in the form of anxiety, personal humiliation, mental anguish and suffering as a result of Dr. Riccardi's false accusations. The degree of mental harm incurred is supported by the fact that Vanderbilt undertook a lengthy and invasive investigation into Dr. Riccardi's claims, and that Dr. Riccardi has continued to maintain the truth of her assertions for over two years, and posted her version of events on the internet approximately six months prior to trial. The case is distinguishable on the facts from those cited by Dr. Riccardi finding insufficient evidence of damages to support a defamation claim.[8] Dr.

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[8] For instance, in *Handley v. May*, the defamatory statement in question was one isolated statement of very limited publication. In considering the issue of damages, the Tennessee Court of Appeals found that the only evidence of personal humiliation and mental anguish and suffering showed that plaintiff was "under mental stress and strain independent of the defamatory utterance and she stated when she was apprised of the

Appendix E

Riccardi's motion for judgment as a matter of law as to Dr. Kessler's defamation claim as a whole must therefore be denied.

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utterance in the telephone conversation: 'Well, the telephone call was quite upsetting.'" 588 S.W.2d at 777. Other than that, she stated "she was unable to concentrate on her business and concluded: 'I think it was the unknown that bothered me more than anything else.'" *Id.* at 777. The court also observed that the plaintiff was apparently more angry than anguished. Noting that "mere annoyance or loss of peace of mind do not constitute recoverable special damages," the Court held that there was no material evidence on the issue of damages and therefore affirmed the trial court's directed verdict in favor of the defendant. *Id.*

Similarly, in *Dowlen v. Mathews,* the Tennessee Court of Appeals affirmed the trial court's directed verdict in favor of the defendant on the plaintiffs defamation case that was based on a citizen'sverbal "assault" against a police officer, characterized by the trial court as a "tirade of inexcusable, offensive, racist language." 2003 WL 1120558, at *5. The appellate court agreed with the trial court that this language, though offensive, did not rise to the level of defamation. In addition, the court found that there was no evidence of serious damage to the plaintiff other than some nightmares and difficulty sleeping immediately after the incident. Otherwise, no one believed the statements, and they did not result in investigation, demotion, suspension, or any missed work. The Court held that the evidence did not show any harm "rispngj above anger, mere annoyance or loss of peace of mind, resulting in no actual damages to Officer Dowlen." *Id. See also Murray v. Lineberry,* 69 S.W.3d at 564 (noting that "the damages complained of by the appellant never rose above embarrassment stemming from individual encounters," and as such did not "rise above 'anger, mere annoyance or loss of peace of mind,'" *id.*, and therefore was not compensable).

Dr. Riccardi also argues that there is no evidence in the record to support a finding that the defamatory statements caused actual damage to Dr. Kessler's reputation and standing in the community, other than through Dr. Kessler's own testimony that he perceived his reputation to have been diminished. Dr. Riccardi's perception in that regard is relevant to his damages in the form of humiliation, embarrassment, and mental anguish. *Cf. Myers v. Pickering Firm, Inc.*, 959 S.W.2d 152 (Tenn. Ct. App. 1997) (in libel suit, affirming jury award of $150,000 for emotional distress based in part on evidence that the plaintiff was "devastated" by damage to his reputation built up over 40 years). However, it does not demonstrate that his reputation in the community has actually been damaged. *See id.* (finding that there was no testimony or evidence in the record that the plaintiff actually suffered injuries to his reputation as a result of the publication found to be defamatory and therefore vacating the $200,000 awarded for such damage to reputation). Notwithstanding, the Verdict Form did not require the jury to distinguish between the damages attributable to mental and emotional suffering and those attributable to injury to reputation— nor did the parties object to the wording of the Verdict Form in that respect. Accordingly, the Court will consider the amount of the compensatory damages award as a whole, below, in the context of Dr. Riccardi's motion for remittitur or a new trial on the issue of defamation damages.

Finally, Dr. Riccardi argues that the evidence in the record is not sufficient to support the jury's award of $500,000 in monetary damages. With respect to this latter argument, the Court agrees. The testimony given by Dr. Kessler at trial indicated that his career suffered because he was unable to work as much as he had previously and has not obtained as much grant funding as he had in the past. Dr. Kessler, however, did not present any evidence that he missed days of work, that his salary or income was reduced as a result of his lack of energy or the investigation of Dr. Riccardi's claims, or that he suffered any type of property damage resulting from the defamatory accusations. The jury's award of $500,000 for "actual monetary damages" will therefore be set aside as not supported, as a matter of law, by the evidence in the record. The motion for judgment as a matter of law as to that portion of the damages will be granted.

B. Motion for Remittitur or New Trial on the Amount of Defamation Damages

Dr. Riccardi argues that the $1,500,000 awarded to Dr. Kessler for "Damage to reputation and standing in the community, emotional distress, emotional pain and mental anguish, loss of enjoyment of life, embarrassment and humiliation, etc." is "patently excessive and not supported by the evidence," and therefore must be reduced or a new trial ordered on the issue of the amount of damages.

Appendix E

Rule 59(a) of the Federal Rules of Civil Procedure provides that a new trial may be granted in an action in which there has been a jury trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Federal law applies in a diversity case to determine whether a new trial should be granted. *Toth v. Yoder Co.*, 749 F.2d 1190, 1197 (6th Cir. 1984). Federal courts have historically exercised their discretion to grant requests for a new trial when, for example, (1) prejudicial error was committed during the trial; (2) the judgment is against the weight of the evidence; (3) the verdict is inadequate or excessive; or (4) new evidence has been discovered. *See Logan v. Dayton Hudson Corp.*, 865 F.2d 789, 790 (6th Cir. 1989).

In the alternative, the Court may exercise its discretion to deny a defendant's motion for a new trial on the condition that the plaintiff agree to remit a suggested amount of the damages awarded by the jury. The plaintiff may accept the reduced damages as suggested by the Court or choose to have a new trial on the issue of damages. *Brewer v. Uniroyal, Inc.*, 498 F.2d 973, 976 (6th Cir. 1974). Generally speaking, a court should not reduce an award unless it is: (1) beyond the range supported by proof; (2) so excessive as to shock the conscience; or (3) the result of mistake. *Denhof v. City of Grand Rapids,* 494 F.3d 534, 547 (6th Cir. 2007).

Besides reiterating her arguments in support of judgment as a matter of law, Dr. Riccardi contends that the jury's $1.5 million compensatory

damages award is excessive in comparison to the amounts awarded for assault and battery and in comparison with compensatory damages awards in similar cases. The Court finds that the amount of the awards for assault and battery is irrelevant to the jury's consideration of defamation damages, and that, while the amount of damages awarded in similar cases may be persuasive, it is not conclusive. *See S. Ry. Co. v. Sloan*, 407 S.W.2d 205, 211 (1965). The Court also finds, however, that the amount awarded in light of the injuries sustained is beyond the range supported by the proof and is so clearly excessive as to shock the conscience. Based upon the Court's own experience, comparable verdicts for mental and emotional damages in this area, the testimony given at trial and the particular facts and circumstances of this case, the Court finds that the maximum amount reasonably supported by the evidence in this case is $250,000. The Court therefore recommends a remittitur of the $1,500,000 compensatory damages award to $250,000. If Dr. Kessler chooses to reject this suggestion, the case will be remanded for a new trial on the issue of compensatory damages arising from defamation.

C. Motion to Set Aside the Jury's Award of Monetary Damages for Battery

As Dr. Riccardi points out, under Tennessee law an award of damages must be supported by proof of such damages "within a reasonable degree of certainty." *Airline Constr. Inc. v. Barr*, 807 S.W.2d

247, 270-71 (Tenn. Ct. App. 1990) (citations omitted). While speculative damages cannot be recovered, in the sense that the fact of damage is uncertain, contingent or speculative, "mere uncertainty as to the amount will not prevent recovery if the evidence is of such certainty as the nature of the case permits and such as to lay a foundation enabling the trier of fact to make a fair and reasonable assessment of damages." *Pinson &Assocs. Ins. Agency, Inc. v. Kreal,* 800 S.W.2d 486, 488 (Tenn. Ct. App. 1990). Thus, in order to be entitled to recover damages a plaintiff must provide the jury with some basis, however approximate, for calculating damages. *Owens v. Univ. Club of Memphis,* 1998 WL 719516, at *17 (Tenn. Ct. App. Oct. 15,1998).

The evidence in this case indicates that Dr. Riccardi broke Dr. Kessler's glasses, poured water into his suitcase, and got blood on his dress shirt; Dr. Kessler did not, however, provide even the most rudimentary estimate of the value of these items, nor did he indicate that he incurred medical bills, any expenses due to inconvenience, or monetary damages from lost work time. His testimony regarding the damage to his personal effects established that he suffered economic injury, but it left the jury in the position of having to engage in speculation and conjecture to arrive at a figure that would compensate him for that injury. The Court therefore finds that there is no material evidence in the record to support the award of $5,000for monetary or economic damages arising from the assault.

Dr. Kessler argues simply that proof of the amount of damages is not necessary when the fact of damages is clear. Generally speaking, cases holding that damages do not have to be proven in a specific amount do so where the evidence is unavailable, usually by the defendant's fault. Even then, the plaintiff must provide some basis for a reasonable estimate of damages. *Cf. Owens v. Univ. Club of Memphis,* 1998 WL 719516 (Tenn. Ct. App. Oct. 15, 1998) (reversing damages award to two of the plaintiffs, noting that the "record contained sufficient evidence to establish the fact of damages but was insufficient to establish the amount of compensatory damages without resort to speculation and conjecture"). The nature of this case is such that Dr. Kessler could easily have made a reasonable estimate as to the value of the items destroyed by Dr. Riccardi and thereby give the jury something to go by other than guesswork. His failure to do so precludes his ability to recover any amount for pecuniary damages. Dr. Riccardi's motion for judgment as a matter of law as to the award for monetary damages arising from the battery will be granted.

D. Motion for Remittitur of the Jury's Award of Punitive Damages

Dr. Riccardi does not contest the availability of punitive damages in the present case, but she does contend that the amount of punitive damages is

grossly excessive and evidence of passion or prejudice on the part of the jury.

In a diversity case involving state-law issues, state law applies to questions regarding the propriety of punitive damages, the factors the jury may consider in determining the amount of punitive damages, and whether the damages are excessive. *Browning-Ferris Indus, of Vt, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 278 (1989). Under Tennessee law, the discretion of the jury in fixing the amount of punitive damages is subject to the supervision of the courts. *Coppinger Color Lab, Inc. v. Nixon*, 698 S.W.2d 72, 74 (Tenn. 1985). An award of punitive damages will be set aside if it is grossly excessive or appears to be the result of passion, prejudice, improper sympathy, or for some other reason that appears to constitute an injustice. *Id.* at 75. In addition, an award of punitive damages must be remitted to the extent that there is no material evidence to support it. *Ellis v. White Freightliner Corp.*, 603 S.W.2d 125, 129 (Tenn. 1980). While no court has any right to substitute its own estimate of the damages for that of the jury, it has the right to determine the amount beyond which there is no evidence, upon any reasonable view of the case, to support the verdict. *Id.* at 126.

The Tennessee Supreme Court has held that a trial court reviewing a jury award of punitive damages should consider, to the extent relevant, "at least" the following factors:

(1) The defendant's financial affairs, financial condition, and net worth;

(2) The nature and reprehensibility of defendant's wrongdoing, for example

(A)The impact of defendant's conduct on the plaintiff, or

(B) The relationship of defendant to plaintiff;

(3) The defendant's awareness of the amount of harm being caused and defendant's motivation in causing the harm;

(4) The duration of defendant's misconduct and whether defendant attempted to conceal the conduct;

(5) The expense plaintiff has borne in the attempt to recover the losses;

(6) Whether defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior;

(7) Whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act;

(8) Whether, once the misconduct became known to defendant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and

(9) Any other circumstances shown by the evidence that bear on determining the proper amount of the punitive award.

Hodges v. S.C. Toof& Co., 833 S.W.2d 896, 901-02 (Tenn. 1992).

With respect to each of these factors, the Court's findings are as follows:

(1) The defendant's financial affairs: The jury indicated that they found it particularly important that Dr. Riccardi obtained approximately $500,000 in her settlement with Vanderbilt prior to trial. In addition, although Dr. Riccardi did not know the current value of her apartment in Naples, bought eighteen years ago for $200,000, the jury could reasonably have surmised that the value of such property had more than doubled in the intervening years, even assuming a very modest rate of accrual in value. In other words, the jury could reasonably have estimated Dr. Riccardi's net worth to be substantially more than she estimated. The Court nonetheless finds, based on the evidence presented at trial, that Dr. Riccardi's net worth is not large enough to justify a punitive damages award close to the $1,000,000 mark.

(2) The reprehensibility of defendant's conduct: Under Tennessee law, the reprehensibility of the conduct is gauged by reference to the degree of harm caused to the plaintiff. *See Coffey v. Fayette Tubular Products*, 929 S.W.2d 326, 332 (Tenn. 1996) ("Normally, the reasonableness of a punitive award is tested by its relationship to the harm suffered by the plaintiff."). The jury here clearly found Dr.

Riccardi's conduct to be morally reprehensible and calculated to "ruin" Dr. Kessler, and the Court has found, as set forth above, that Dr. Kessler proved that he suffered substantial compensable injury as a result of the Dr. Riccardi's defamation (as well as from assault and battery). Notwithstanding, Dr. Kessler's injuries were not shown to be as severe as they might have been, despite Dr. Riccardi's intention. The Court finds that the punitive damages award in this case is disproportionate to the degree of harm inflicted.

(3) The defendant's awareness of the harm caused and motivation in causing the harm: As Dr. Kessler points out, he presented proof, which the jury evidently credited, that Dr. Riccardi had expressly threatened to ruin him personally and professionally, to sue him for a million dollars, to take his house and get him fired from his job. (Tr. 86, 90-91.) Based on this evidence, the jury could reasonably conclude that Dr. Riccardi was motivated by vindictiveness and that she was aware of and intended to cause harm.

(4) The duration of defendant's misconduct and whether she attempted to conceal it: The jury reasonably determined that Dr. Riccardi was not truthful in her testimony, and believed that she intentionally and maliciously maintained her version of events for more than two years, during which time Dr. Kessler was required to defend himself and his reputation. Although Dr. Riccardi did not attempt to

conceal her behavior, she did attempt to conceal the truth.

(5) The expense plaintiff has borne in the attempt to recover the losses: Dr. Kessler testified that he spent over $400,000 in defending himself against Dr. Riccardi's claims. While Dr. Riccardi argües that only the amounts spent to prosecute his own claims should be taken into consideration, the Court finds that the two actions were basically inseparable, and Dr. Kessler could not prove that Dr. Riccardi defamed him unless he also successfully defended himself against her claims.

(6) Whether the defendant profited from the activity: Dr. Riccardi did not profit from her defamatory conduct though the jury may reasonably have concluded that she attempted to do so by filing her lawsuit.

(7) Whether the defendant has been subjected to previous punitive damage award: This factor is not relevant.

(8) Whether the defendant took remedial action or attempted to make amends: Dr. Riccardi never took remedial action nor, to the Court's knowledge, attempted to effectuate a prompt and fair settlement.

(9) Other circumstances: Dr. Riccardi does not specifically identify any other relevant circumstances. All of the relevant factors weigh

heavily in favor of a substantial punitive damages award, just not as high as the amount actually awarded by the jury. The amount awarded likely exceeds Dr. Riccardi's net worth, while Dr. Kessler did not show that his injuries were particularly debilitating. Accordingly, having reviewed the *Hodges* factors and the evidence in the record, the Court finds that the maximum amount of punitive damages that may reasonably be awarded under the facts and circumstances shown in this case is $250,000. *Cf. Ellis,* 603 S.W.2d at 126 (Tenn. 1980) (the trial court has the "right to determine the amount beyond which there is no evidence, upon any reasonable view of the case, to support the verdict"). That amount will have the desired effect of adequately punishing the defendant and deterring future similar behavior in the future. The Court therefore suggests a remittitur of the punitive damages awarded by the jury to the sum of $250,000. If Dr. Kessler chooses to reject this suggestion, the case will be remanded for a new trial on the issue of punitive damages.

IV. CONCLUSION

For all the above reasons, Plaintiff Patrizia Riccardi's Motion for Judgment as a Matter of Law as to Dr. Kessler's defamation claim as a whole will be denied. The motion will be granted with respect to the damages awarded specifically for monetary injury resulting from defamation, as there is no material evidence in the record that Dr. Kessler suffered economic injury. The motion to set aside the

$5,000 awarded for monetary injury in connection with Dr. Kessler's battery claim will also be granted, again on the basis that as Dr. Kessler failed to present any evidence of monetary injuries from which the jury could make a reasonable assessment of the amount of such damages.

Dr. Riccardi's alternative motion for a new trial on the issue of compensatory damages for defamation and punitive damages will be denied, conditioned upon Dr. Kessler's acceptance of the Court's suggested remittitur of the defamation compensatory damages to $250,000 and the punitive damages award to $250,000. If Dr. Kessler informs the Court that he accepts the suggested remittitur as to both these awards, a revised and amended judgment will be entered in this case. If he rejects the suggested remittitur of either of these awards, a new trial on the relevant issue(s) will be ordered. In all other respects, Dr. Riccardi's motion will be denied.

An appropriate Order will enter.

Thomas A. Wiseman, Jr.
Senior U.S. District Judge

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

Dr. Robert Kessler,	) Civil Action No.
Plantiff,	) 3:06cv0615
	) CONSOLIDATED WITH
v.	) Civil Action No.
	) 3:06cv0605
Dr. Patrizia Riccardi,	) Judge Thomas A.
Defendant	) Wiseman, Jr.

AMENDED FINAL JUDGMENT IN A CIVIL CASE

The Plaintiff in Civil Action No. 3:06cv0615, Dr. Robert Kessler, having given notice that he accepts the Court's suggested remittitur, the Court hereby enters an amended final judgment in favor of the Plaintiff as follows:

IT IS ORDERED AND ADJUDGED:

That as to Plaintiff's Defamation Claim, judgment is hereby entered in favor of the Plaintiff, Dr. Robert Kessler, and that the Plaintiff, Dr. Robert Kessler, recover of the Defendant, Dr. Patrizia Riccardi, the sum total of $250,000.00 in compensatory damages;

That as to Plaintiffs claim for punitive damages, judgment is hereby entered in favor of the

Plaintiff, Dr. Robert Kessler, and that the Plaintiff, Dr. Robert Kessler, recover of the Defendant, Dr. Patrizia Riccardi, the sum of $250,000.

This amendment does not affect in any other respect the final judgment entered in this action on October 23, 2007 (Doc. No. 239), as amended by the Court's Order (Doc. No. 259) granting in part and denying in part Defendant Dr. Patrizia Riccardi's Motion for Judgment as a Matter of Law (granting the motion to set aside as a matter of law monetary damages of $500,000 and $5,000 awarded by the jury to Dr. Kessler for, respectively, his defamation and battery claims).

This is a final appealable judgment pursuant to Fed. R. Civ. P. 58.

Thomas A Wiseman, Jr.
Senior U.S. District Judge

Appendix E

1 PROCEEDINGS:
2 THE COURT: All right. First, the Court did deferred
3 ruling on the Rule 50 motion with respect to the THRA claim
4 for retaliation. The Court has considered the United States
5 supreme Court reversal of the Sixth Circuit in the *Burlington*
6 case. That is instructive to this Court because it deals with
7 Title VII. It is not binding on interpretations of the THRA.
8 it comes down to something that the Supreme Court of
9 Tennessee has not yet ruled on, and that is the standard of
10 the definition of an adverse employment action. On the one
11 hand, there is a likely to deter standard, which the
12 *Burlington* case takes with respect to Title VII, or the
13 material and adverse change definition, which Tennessee
14 supreme Court has previously taken with respect to other --
15 not retaliation, but other actions.
16 But the *Reignier* case, R-e-i-g-n-i-e-r, of the Middle
17 District -- of the Middle Division of the Court of Appeals in

18 Tennessee, provides an exhaustive discussion of Tennessee law
19 under the THRA. And, although it's not a reported decision,
20 nor is it a decision of the Tennessee supreme Court,
21 nevertheless, this Court believes that the supreme Court would
22 very likely adopt the Middle District ruling in the THRA case
23 of retaliation, and, therefore, this Court will apply the
24 material and adverse standard.
25 However, under either standard, of material and

1 adverse, or likely to deter, there must be a causal
2 relationship between the adverse action and the resulting
3 damage, if any, to the plaintiff.
4 Here the damage is ethereal and speculative.
5 Furthermore, the defendant, Dr. Kessler, has articulated a
6 nondiscriminatory reason for the action taken on the methadone
7 contract and the respiradone contract, to which there is no
8 proof that these reasons -- no convincing proof that these
9 reasons are pretextural. It's not a matter that should be
10 submitted to the jury, because the Court believes that a

11 reasonable jury could not find in favor of the plaintiff on
12 that claim.
13 Therefore, the motion under Rule 50 will be granted,
14 and the retaliation claim removed from consideration by the
15 jury.
16 Now, we come now to the draft of the jury
17 instructions. And Mr. Frumkin, I will hear you first as to
18 what objections, if any, you may have.
19 MR. FRUMKIN: Thank you, Your Honor. The only
20 opinion, the only reference I have, Your Honor, is there seems
21 to be a -- probably somewhat of a typographical error on —
22 starts on the bottom of page nine and goes over to page ten.
23 it says, however, you may also find that neither party
24 has proved — however, you may also find that neither party
25 has proved his or her claims by a preponderance of the

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(3)

No. 10-107

Supreme Court, U.S.
FILED
AUG 23 2010
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In The
Supreme Court of the United States

PATRIZIA RICCARDI,

Petitioner,

v.

ROBERT KESSLER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTIONS PRESENTED

Petitioner's statement of questions presented is misleading and mischaracterizes the rulings of the lower courts. A proper statement of the questions presented is as follows:

1. Did the Court of Appeals err in finding that the District Court did not abuse its discretion in permitting Respondent to offer evidence that Petitioner had shared with Respondent intimate details about her sexual life on the basis that this evidence went to the heart of the Respondent's core defense that he and Petitioner shared a consensual, intimate relationship?

2. Was Petitioner deprived of Due Process by the fact that District Court Judge Thomas Wiseman did not recuse himself when no actual or apparent conflict of interest existed and when the Court of Appeals refused to consider this issue, which Petitioner failed to raise at the trial court level?

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B. District Court Judge Thomas Wiseman did not err by failing to recuse himself when no actual or apparent conflict of interest existed, and the Court of Appeals did not err by refusing to consider this issue, which Petitioner failed to raise at the trial court level 11

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STATEMENT OF THE CASE

Petitioner, Patrizia Riccardi, a psychiatrist, began a medical research fellowship in the Radiology Department at Vanderbilt University Medical Center ("Vanderbilt") in September 2003 under the supervision of the Respondent, Dr. Robert Kessler, also a Vanderbilt employee. Petitioner alleges that Respondent began sexually harassing her in November 2003, which gradually worsened and culminated in a physical altercation at a Toronto professional conference that Petitioner characterizes as a battery and attempted rape. Respondent denies these allegations, contending that the two began an on-again-off-again consensual affair in January 2004 that lasted until June 2005, and that he, not Petitioner, was the victim of the physical altercation in Toronto. [Appendix A to Petition at page 3a].

After the Toronto altercation, in June of 2005, Petitioner made a report of sexual harassment and attempted rape against Respondent to their employer, Vanderbilt. Vanderbilt authorities conducted an investigation, ultimately concluding that the evidence was insufficient to substantiate Petitioner's claims. During the investigation, Respondent told Vanderbilt authorities that he and Petitioner had engaged in a consensual sexual relationship. Vanderbilt thereafter strictly limited the interactions between Petitioner and Respondent. [*Id.* at pages 3a-4a].

In June 2006, Petitioner filed a sexual harassment complaint against Vanderbilt, the Respondent

and radiology department chair, Dr. Martin Sandler ("Sandler"). She raised a state-law claim for retaliation against Respondent individually, along with claims for battery and intentional infliction of emotional distress stemming from the physical altercation in Toronto. Respondent countersued, alleging defamation as well as assault and battery claims based on the Toronto incident. Petitioner settled her claims against Vanderbilt and Sandler, and they were dismissed from this action prior to trial. [*Id.* at page 4a].

Petitioner alleged that Respondent unlawfully retaliated against her by inadequately supporting her grant-writing efforts and by refusing to include her on a number of his own grant proposals. The District Court granted partial summary judgment to Respondent regarding his conduct on five of the grants, finding that Respondent presented legitimate non-retaliatory reasons for his actions and that Petitioner had not shown a genuine factual issue as to whether the stated reasons were pretextual. As for Respondent's actions on two of the research projects, however, the District Court found a sufficient question of fact to at least warrant a trial. With the issues limited to Petitioner's remaining two allegations of retaliatory conduct, Respondent's defamation claim and both of their personal-injury claims, the case proceeded to trial. At the close of the evidence and before the case went to the jury, the District Court granted Respondent's motion for judgment as a matter of law on Petitioner's remaining two allegations of retaliation,

determining that Petitioner neither established that she suffered any adverse action nor demonstrated that the explanations Respondent gave for his actions were pretextual. [*Id.* at pages 4a-5a].

In order to establish his core defense – that Respondent and Petitioner had engaged in a consensual relationship – Respondent sought to offer evidence that Petitioner had shared with him intimate details of her sexual life, which she would have done only if the two shared an intimate personal relationship. Petitioner objected to this evidence, and the District Court overruled Petitioner's objection, citing the well-established Rule of Evidence 412(b)(2), which permits evidence pertaining to an alleged victim's sexual history if its probative value substantially outweighs the danger of harm or unfair prejudice. [*Id.* at pages 14a-15a].

After weighing all the evidence, the jury rejected Petitioner's claims and found in Respondent's favor on all claims, awarding him $15,000 in damages for battery, $10,000 in compensatory damages for assault, $500,000 in actual monetary damages for defamation, $1,500,000 in other compensatory damages for defamation and $950,000 in punitive damages. The District Court granted Petitioner's motion for remittitur, decreasing the compensatory damages award from $1,500,000 to $250,000 and the punitive damages award from $950,000 to $250,000, which Respondent accepted. The District Court entered a final judgment. [*Id.* at pages 5a-6a].

Petitioner appealed the judgment to the United States Court of Appeals for the Sixth Circuit. After Petitioner filed her brief in the Court of Appeals, she filed a motion to amend her brief to raise a new argument that District Court Judge Thomas Wiseman had a conflict of interest due to his ties to Vanderbilt as an additional basis for granting her a new trial, an issue which she had not previously raised at the District Court level or in her initial brief on appeal. In that motion, she misleadingly refers to Vanderbilt as "a defendant in the case" despite the fact that Vanderbilt had been dismissed after settling with Petitioner long before she and Respondent alone went to trial. [Appendix B to the Petition at page 28a]. The Sixth Circuit Court of Appeals denied Petitioner's motion [Appendix A to the Petition at page 3a].

The Court of Appeals reversed the District Court's pre-verdict grant of judgment as a matter of law on Petitioner's retaliation claim but upheld the judgment on all other counts, including the compensatory damages and punitive damages award obtained by Respondent for prevailing on his assault and battery and defamation claims. The case was remanded to the District Court for trial on Petitioner's remaining retaliation claims. [*Id.* at page 28a].

Petitioner now seeks a writ of certiorari with this Court.

However, on remand in the District Court, Petitioner filed a motion to vacate the previous judgment

pursuant to Federal Rule of Civil Procedure 60 on the argument that Judge Wiseman should have recused himself prior to trial due to conflict of interest. [Respondent Appendix A at App. 1]. This was the first time this issue had been raised at the trial court level. District Court Judge William Haynes denied Petitioner's motion. [*Id.* at App. 1]. On June 18, 2010, Petitioner again appealed to the Sixth Circuit Court of Appeals, seeking review of the issue of whether the District Court Judge should have recused himself due to a conflict of interest arising from his prior connections to Vanderbilt. [Respondent Appendix B at App. 3]. Thus, this issue is not only before this Court, but is simultaneously before the Sixth Circuit Court of Appeals after Petitioner finally raised it at the trial court level.

REASONS THE PETITION SHOULD BE DENIED

I. Petitioner Fails to Establish Compelling Reasons for Review by the United States Supreme Court

Supreme Court Rule 10 states that a petition for a writ of certiorari will be granted only for "compelling reasons," and is rarely granted when the asserted error consists of "erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Petitioner simply does not like the manner in which the District Court and Court of Appeals applied clearly established rules of law, and she

contends that the District Court abused its discretion in doing so. Petitioner does not establish any of the factors typically considered pursuant to Rule 10. She does not establish that the decision below conflicts with the decision of a federal court of appeals or a state court of last resort on an important federal question. She does not establish that the lower court decided an important question of federal law in a way that conflicts with a Supreme Court decision. She does not establish that the court below decided an important question of federal law that has not been, but should be, settled by the Supreme Court. She has not established that the lower court has so far departed from the accepted and usual course of proceedings as to require the Court's rarely invoked "supervisory power." She simply does not like the manner in which the lower courts applied clear rules of law.

Petitioner attempts to shoe-horn this case into the above factors by contending that the lower courts did act contrary to judicial precedent and departed from the accepted and usual course, but examination of the cases she cites refutes her claim. Petitioner does not actually establish any such important conflict. Rather, she cites cases applying these well-settled rules of law to diverse sets of facts and coming to different conclusions based on the specific facts of those cases. Petitioner simply does not like the manner in which the District Court properly exercised its discretion under the facts of this specific case. As discussed more fully in the following section, not only

is there no significant division or departure to create a "compelling reason" for review under Rule 10, but under the facts of this case, the lower courts' rulings also happened to be correct.

II. The Lower Courts' Decisions were Correct

A. The Court of Appeals did not err in finding that the District Court did not abuse its discretion in permitting Respondent to offer evidence that Petitioner had shared with Respondent intimate details about her sexual life on the basis that this evidence went to the heart of the Respondent's core defense that he and Petitioner shared a consensual, intimate relationship.

Respondent's core defense at trial was that he did not sexually harass or stalk Petitioner, but that they had a consensual, intimate sexual relationship that extended for many months. Petitioner denies that they had any such close relationship. However, the fact that Petitioner shared with Respondent intimate details of her personal life and relationships goes directly to Respondent's chief defense. The District Court properly found as follows:

> This testimony is relevant to the nature of the parties' relationship and their respective credibility, which are issues going to the very heart of this case. The probative value of this evidence therefore substantially outweighs

> the danger of harm to Dr. Riccardi resulting from its admission.

[Petitioner Appendix D at pages 97a-98a].

Not only is this ruling not an abuse of discretion, but it is correct. Furthermore, Petitioner actually first raised the subject voluntarily by testifying on *direct examination* by her counsel that she does not sleep with married men and therefore never would have slept with Respondent, opening the door to this issue on an additional basis and waiving any objection to it.

At trial, Petitioner's counsel questioned Petitioner about her past relationships in her case-in-chief. R. 265 (Tr. 135-38). He asked whether Petitioner discussed her previous relationships with Respondent, and Petitioner responded that she had. *Id.* Apparently attempting to refute Respondent's defense that they had a sexual relationship, Petitioner also testified on direct examination that she told Respondent she did not date married men, and that she had only done so once in her life. R. 265 (Tr. 136). Petitioner specifically testified that she had a "brief encounter" with a man in Italy. R. 265 (Tr. 139).

Respondent's counsel cross-examined Petitioner about her relationship with Respondent and her earlier testimony that she did not date married men. R. 266 (Tr. 409). On cross-examination, Respondent contradicted her earlier testimony and confirmed that she had indeed had relationships with other married men. R. 266 (Tr. 410-14). Petitioner initially denied

that she told Respondent about men she had slept with, but admitted that she told him about men with whom she had long love relationships in which sex was involved. R. 266 (Tr. 410). Petitioner also confirmed that she had a "sex encounter" with the man in Italy. R. 266 (Tr. 415). These are not the types of conversations one has with her "stalker."

As an initial matter, the challenged testimony is relevant to the nature of the relationship between Petitioner and Respondent. Petitioner testified that Respondent was a stalker and made her life a nightmare. R. 265 (Tr. 112, 114). She also testified that she did not date married men. R. 265 (Tr. 136). The fact that Petitioner discussed her past relationships with Respondent makes it less probable that she considered him to be a harasser and stalker or was otherwise afraid of him as she claimed. *See* Fed. R. Evid. 401. Questions about Petitioner's relationship with other married men were proper for the additional reason that they refuted her previous testimony denying that she dated married men.

The District Court did not abuse its discretion in admitting this relevant evidence. First, Rule 412 is not applicable because Respondent did not offer the testimony to prove that Petitioner "engaged in other sexual behavior" or to prove Respondent's "sexual predisposition." *See* Fed. R. Evid. 412. Instead, he offered the testimony to establish that Petitioner told him about intimate details of her relationships with other men, not to prove that she actually engaged in any sexual behavior.

Even if Rule 412 were applicable, all of the challenged testimony relates directly to the relationship between Petitioner and Respondent, so the probative value of the testimony substantially outweighs any risk of undue harm. *See Wilson v. City of Des Moines*, 442 F.3d 637, 643 (8th Cir. 2006) (employee's workplace behavior admissible under Rule 412 to show whether harassment was unwelcome); *Socks-Brunot v. Hirschvogel Inc.*, 184 F.R.D. 113 (D. Ohio 1999) (excluding proof because no connection with alleged harasser; proffered testimony therefore not probative of whether alleged sexual harassment was unwelcome because it had nothing to do with alleged harasser). Therefore, the District Court properly admitted testimony regarding Petitioner's relationship history.

The District Court also properly rejected Petitioner's arguments that the challenged testimony was inadmissible on other grounds. First, questions about Petitioner's relationships with other married men were proper cross examination to refute her testimony on direct examination. *United States v. Bender*, 265 F.3d 464, 471 (6th Cir. 2001) (permitting cross examination to impeach witness on matters addressed on direct). Also, since Petitioner voluntarily offered evidence that she had dated only one married man, her admission that she had at least one other affair and at least three affairs while she was married is highly probative of her truthfulness. *See* R. 266 (Tr. 310, 412-15).

In her Petition for Writ of Certiorari, Petitioner focuses on the *title* of Respondent's Rule 412 motion in limine, italicizing the words *Past Sexual Behavior and Sexual Predisposition* in an effort to establish that the purpose of this evidence was to establish that she was predisposed to certain sexual behavior. This argument is a red herring, as the language in the title of the motions is simply taken from the title of Rule 412, while the substance of the motion and the District Court's ruling goes directly to a salient and essential issue in this lawsuit – the nature of the relationship between Petitioner and Respondent, and not to her predisposition toward sex.

B. District Court Judge Thomas Wiseman did not err by failing to recuse himself when no actual or apparent conflict of interest existed, and the Court of Appeals did not err by refusing to consider this issue which Petitioner failed to raise at the trial court level.

Although she did not raise it at the trial level, Petitioner contends that she should be granted a new trial because District Court Judge Thomas Wiseman had a conflict of interest due to the facts that (1) he taught adjunct courses at Vanderbilt Law School from 1989 to 2004; (2) he has, in the past, received two awards from Vanderbilt (2004 Law School Distinguished Service Award and 2007 Sigma Chi award); (3) his son, a lawyer in Nashville, graduated from Vanderbilt, teaches a trial advocacy course there, and

is with a firm that periodically represents Vanderbilt (though with no relation to this case); and (4) he is a member of Vanderbilt Law School's leadership donor society.

Petitioner contends that because Judge Wiseman has connections to one of the defendants, the trial should be invalidated and a new trial granted. Petitioner ignores the fact that she settled with Vanderbilt long ago, and that Vanderbilt was not a defendant in this lawsuit at the time of trial. There is absolutely no evidence of any connection between Judge Wiseman and Respondent or any other party that had any stake at trial.

Even if Vanderbilt had been a defendant at trial, Judge Wiseman still would not have had an actual or apparent conflict of interest in hearing this case, such that he would be required to recuse himself. The standard is one of objective reasonableness, as recusal is appropriate only if the judicial officer's impartiality might reasonably be questioned under the circumstances. *See* 28 U.S.C. §455(a). This standard is well-articulated in *In re: Allied-Signal Inc., et al.*, 891 F.2d 967, 970 (1st Cir. 1989):

> We draw our legal standards for review of a district judge's decision not to disqualify himself from an analogous case, *In re United States*, 666 F.2d at 690. We there held (1) that "a charge of partiality must be supported by a *factual basis*," (2) that "disqualification is appropriate only if the facts provide what an objective, knowledgeable

member of the public would find to be a *reasonable basis* for doubting the judge's impartiality," and (3) that this court of appeals will allow the district judge "a range of discretion" in making these determinations. *Id.* at 695 (emphasis in original). Only if the District Court's decision to sit "*cannot be defended as a rational conclusion supported by reasonable reading of the record*" will we insist upon disqualification. *Id.* (emphasis added). *See United States v. Giorgi*, 840 F.2d 1022, 1034 (1st Cir.1988) ("The decision to grant or to deny a motion for disqualification is committed largely to the discretion of the trial court, and we review it solely to evaluate whether the decision below amounted to an abuse of discretion."). We also said that, when considering disqualification, District Court is *not* to use the standard of "Caesar's wife," the standard of mere suspicion. *In re United States*, 666 F.2d at 695 n. *. That is because the disqualification decision must reflect *not only* the need to secure public confidence through proceedings that appear impartial, *but also* the need to prevent parties from too easily obtaining the disqualification of a judge, thereby potentially manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking. *See, e.g., In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir.1988) ("A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is."), *cert. denied sub. nom. Milken v. SEC*, 490 U.S. 1102, 109 S.Ct. 2458, 104 L.Ed.2d 1012

> (1989); *In re United States,* 666 F.2d at 694; *United States v. Bray,* 546 F.2d 851, 857 (10th Cir.1976); *Alvarado Morales v. Digital Equipment Corp.,* 699 F.Supp. 16, 19 (D.P.R.1988) ("[I]t has been wisely observed that each judge must be alert to avoid the possibility that those who would question his impartiality are in reality seeking to avoid the consequences of his expected adverse decision. . . ."); H.R.Rep. No. 1453, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S.Code Cong. & Admin. News 6351, 6355 ("Litigants ought not to have to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice."). Even though § 455 was intended to do away with the formal "duty to sit" doctrine, *see Blizard v. Frechette,* 601 F.2d 1217, 1220 (1st Cir.1979); H.R.Rep. No. 1453, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S.Code Cong. & Admin. News 6351, 6355, the judge must still tread cautiously, recognizing, on the one hand, the great importance to the judicial institution of avoiding any appearance of partiality, while simultaneously remaining aware of the potential injustices that may arise out of unwarranted disqualification.

This case is similar to *Lunde v. Helms*, 29 F.3d 367 (8th Cir. 1994), *cert. denied*, 513 U.S. 1155, 115 S.Ct. 1111, 130 L.Ed.2d 1076 (1995) in which this Court denied a petition for writ of certiorari on precisely this issue after the Court of Appeals had held that recusal of the district judge was not warranted. In *Lunde v. Helms*, the University of Iowa was a

party-defendant. The Plaintiff (after having properly raised the issue at the trial court level, unlike the instant case) contended that the district judge was biased against her because of his association with the University of Iowa. The District Judge had graduated from the University of Iowa Law School, contributed to the University of Iowa Law School and presented educational programs there. The Eighth Circuit Court of Appeals provided the following discussion:

> We do not think that the district judge's having graduated from the university law school, even though the university is a party defendant, without more, is a reasonable basis for questioning the judge's impartiality. *See Easley v. University of Michigan Board of Regents*, 906 F.2d 1143, 1146-47 (6th Cir.1990) (judge's graduation from and affiliation with law school, which was party defendant, not grounds for recusal, absent evidence that judge was privy to extrajudicial information relating to student's situation at law school), *cert. denied*, 499 U.S. 947, 111 S.Ct. 1414, 113 L.Ed.2d 467 (1991); *Brody v. President of Harvard College*, 664 F.2d 10, 11 (1st Cir.1981) (per curiam) *371 (judge's having attended or graduated from university which was party to case, without more, not grounds for recusal), *cert. denied*, 455 U.S. 1027, 102 S.Ct. 1731, 72 L.Ed.2d 148 (1982).
>
> In addition, we do not think the district judge has any financial interest in these proceedings. We do not think that making

> alumni contributions or participating in university educational programs, without more, is a reasonable basis for questioning the judge's impartiality. *See Willner v. University of Kansas*, 848 F.2d at 1028 (participation in alumni activities). Even a substantial judgment against the university would have no financial impact on the district judge as a graduate of the university law school.

Lunde v. Helms, 29 F.3d at 370-301.

Furthermore, even if Vanderbilt had been a defendant at trial, and even if these facts did rise to the level of a conflict of interest, Petitioner failed to raise this issue in the District Court. Petitioner contends that she discovered this evidence, none of which is new and all of which is publicly available, and gives no reason why she did not or could not have discovered it or raised the issue prior to trial.

CONCLUSION

The law applicable to this case is settled. Petitioner has not established any compelling reason for this Court to grant her Petition. Respondent prays that the Court deny the Petition.

Respectfully submitted,

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Attorneys for Respondent

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

Patrizia Riccardi, Plaintiff, v. Robert Kessler, Defendant	))))))))	**CASE NO: 3:06-0605** **CASE NO: 3:06-0615** [ORDER Under the law of the case doctrine, this Motion is DENIED. The action will proceed only on the claims remanded by the Sixth Circuit. signed by District Judge William J. Haynes, Jr. 5-20-10]

PRO SE PLAINTIFF
DR. PATRIZIA RICCARDI'S
MOTION TO VACATE JUDGMENT

Plaintiff, Patrizia Riccardi, Pro Se, submits this motion pursuant to Fed.R.Civ.P. 60(b)(6), requesting the Court to vacate the judgment entered against Plaintiff and to reinstate this case nunc pro tunc on the basis that at the time District Court Judge Thomas Wiseman heard the case, he had an undisclosed conflict of interest in violation of 28 USC §455(a), which required his *sua sponte* recusal.

PRELIMINARY STATEMENT

This motion presents matters of general public importance in the administration of justice and the public's perception of the judiciary. Plaintiff was denied

due process and a fair trial because District Court Judge Thomas Wiseman should have disqualified himself from hearing the case pursuant to 28 USC §455(a) based on his and his family's close ties with Defendant, Vanderbilt University. Judge Wiseman did not disclose his conflict of interest at the time he

* * *

APPENDIX B

United States District Court
for the MIDDLE DISTRICT
District of 6th Circuit

PATRIZIA RICCARDI, MD
pro se

Plaintiff,

vs. **CASE NO.3:0605**

ROBERT KESSLER

Defendant.

NOTICE OF APPEAL

Notice is hereby given that PATRIZIA RICCARDI (here name all parties taking the appeal), hereby appeal to the United States Court of Appeals for the Sixth Circuit from ORDER DENYING (the final judgment) (from an order (describing it)) MOTION TO VACATE JUDGMENT entered in this action on the 20th day of MAY, 2010.

(s) Patrizia Riccardi
Address: 555 MAIN STREET
APT.515
NEW YORK, NY
10044
Attorney for

cc: Opposing Counsel ☑
Court of Appeals ☑

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon counsel of record this 16th day of June, 2010, via regular U.S. Mail delivery, first-class, postage prepaid, addressed as follows:

Kevin Hunter Sharp, Esq.
Drescher & Sharp, P.C.
1720 West End Avenue, Suite 300
Nashville, Tennessee 37203

/s/ Patrizia Riccardi
Patrizia Riccardi, MD

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 23, 2010

Doctor Patrizia Riccardi
555 Main Street
Apartment 515
New York, NY 10094

Re: Case No. 10-5736,
Patrizia Riccardi v. Robert Kessler
Originating Case No. : 06-00605

Dear Sir or Madam,

This appeal has been docketed as case number **10-5736** with the caption that is enclosed on a separate page. Please review the caption for accuracy and notify the Clerk's office if any corrections should be made. The appellate case number and caption must appear on all filings submitted to the Court.

As the appellant, when you submit motions, briefs or any other documents to the Clerk's office, send only **1** original, with your signature. Copies are no longer necessary because the original documents will be scanned into the court's Electronic Case Filing system. You must mail opposing counsel a copy of

every document you send to the Clerk's office for filing.

Opposing counsel will docket pleadings as an ECF filer. Check the ECF page on the court's web site www.ca6.uscourts.gov for additional information about ECF filing if you are not familiar with it. The following forms are due by **July 7, 2010**.

Appellant: Transcript order form, designating whether transcript will be ordered

Appellee: Appearance of Counsel
Disclosure of Corporate Affiliation
Application for Admission to 6th Circuit Bar (if applicable)

The Clerk's office cannot give you legal advice but if you have questions about the forms, please contact the office for assistance.

Sincerely yours,

s/Cheryl Borkowski
Case Manager
Direct Dial No. 513-564-7035
Fax No. 513-564-7094

cc: Mr. Kevin H. Sharp

Enclosure

OFFICIAL COURT OF APPEALS CAPTION FOR 10-5736

PATRIZIA RICCARDI

Plaintiff-Appellant

v.

ROBERT KESSLER

Defendant-Appellee